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No. 92-_____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TIM ROCHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Fourth District

---

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether, consistent with the First and Fourteenth Amendments to the United States Constitution, the State of Florida may punish a reporter for publishing portions of a widely disseminated court order which the reporter lawfully obtained.

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No. 92-_____

TIM ROCHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Petitioner, Tim Roche, respectfully prays that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of Florida, Fourth District, in the case captioned *In re Investigation: Florida Statute 27.04, Subpoena of Roche*, 589 So. 2d 978 (Fla. Dist. Ct. App. 1991).

OPINIONS BELOW

The order of the Supreme Court of Florida declining, by a 4-3 vote, to review the decision of the Fourth District Court of Appeal, is reported at 599 So. 2d 1279 (Fla. 1992) and is reprinted at 1a.[1] The decision below is reported at 589 So. 2d 978, and is reprinted at 3a. The trial court order finding Petitioner in contempt of court is not reported, but is reprinted at 10a.

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[1] References to the Appendix are designated as "___ a." References to the record are designated as "R ___."

JURISDICTION

On June 2, 1992, a divided Supreme Court of Florida entered an order denying discretionary review of an appellate court judgment affirming Petitioner's conviction for contempt. *See* 1a. This Petition is being docketed within 90 days from entry of that order, and in accordance with Justice Kennedy's Order of July 22, 1992 granting Petitioner's Application for Stay. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment, United States Constitution:

"Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

Fourteenth Amendment, United States Constitution:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

Florida Statutes § 39.411 (West 1988):

* * *

> (3) The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents or legal custodians of the child and their attorneys, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any

official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4) All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, or law enforcement agent shall be confidential and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, law enforcement agents, and others entitled under this chapter to receive that information, except upon order of the court.

(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

STATEMENT OF THE CASE

A. Statement of Facts.

Petitioner, Tim Roche, is a reporter for *The Stuart News*, a newspaper of general circulation serving Stuart and the surrounding towns and cities of Martin and St. Lucie Counties in southeast Florida. Petitioner covers civil and criminal proceedings in the Martin County courts. Among the news events he covered extensively in 1989 and 1990 was the unfolding story of the death of a three-year-old girl, the prosecution of her parents for child abuse, and the court-ordered termination of her mother's parental rights to her surviving sister.

For his attempt to chronicle the final event of this tragedy truthfully, Petitioner now faces incarceration in the Martin County jail.

The events underlying this Petition began on November 22, 1988, when three-year-old Crystal Lynn McGrath was tortured and beaten at the home of her mother, Cheryl Puffinberger, and her stepfather, Carl Puffinberger. She died from massive internal injuries the following morning at a local hospital.[2]

In January 1989, Carl and Cheryl Puffinberger were arrested on aggravated child abuse charges. (The couple's only natural child, four-month-old Charlotte May, had been removed from their custody and made a ward of the State immediately following Crystal's death. *See* Affidavit of Jane Doe, Charlotte May's Foster Parent, reprinted at 26a). Carl Puffinberger was later sentenced to ten years in state prison for aggravated child abuse, while Cheryl Puffinberger pleaded no contest to neglect charges based on her failure to report the violence against Crystal and received a nine-month jail term.[3]

In early 1990, Cheryl Puffinberger sought to regain custody of Charlotte May, while HRS sought to terminate her parental rights. At the same time, Charlotte May's foster mother, convinced that returning the child to her mother

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[2] Reports that Crystal was being abused were first made to Florida's Department of Health and Rehabilitative Services ("HRS") in June 1988. *See* Attachment to Memorandum from Gerald D. Slavens to G. Peter Digre (April 25, 1989), reprinted at 18a, 19a. It was only after she died that a review of HRS records revealed that the social worker assigned to Crystal's case had not observed her after July. *Id.* at 18a. In March 1989, as a result of pressure prompted by public outrage, HRS formalized its procedures for reviewing child abuse cases. *Id.* at 25a.

[3] Murder charges were not filed because the State Attorney was unable to determine which parent dealt the fatal blows. *See* 41a.

"could [have] result[ed] in endangering her," became concerned that "nothing was being done by state [HRS] officials to prepare for the [termination] hearing," and that, without public pressure, Charlotte May's case would not get "the priority it warranted." *See* 27a-28a. By the time the termination proceedings began, public interest in Charlotte May's welfare was intense.[4] Neither of Charlotte May's parents sought to shield their acrimonious custody fight with the State from public scrutiny. Indeed, just four days before the termination proceedings were to begin, Cheryl Puffinberger granted interviews. *See, e.g.*, T. Roche, "Fight for kid begins," *The Stuart News*, May 18, 1990, reprinted at 40a; J. Taylor, "Mother who watched beatings wants daughter," *The Palm Beach Post*, May 18, 1990, reprinted at 44a. Carl Puffinberger—who relinquished his parental rights on the morning the proceedings began—also granted an interview from prison.

On May 29, 1990, after a two-day hearing, The Honorable Paul Kanarek entered an order ("the Termination Order") terminating Cheryl Puffinberger's parental rights. Pursuant to Fla. Stat. Ann. § 39.411, the Termination Order was to be kept separate from other judicial records by the Juvenile Court clerk, and, unlike most court records, was to be made available to the public "only upon order of the court." The Judge entered neither an order sealing the Termination Order, nor one prohibiting its publication by the Florida news media,[5] electing instead to hand it "to the Clerk," rather than just "put it in a box where someone could pick it up and look at it." *See* R7-8. Nevertheless, by the end of the day, two dozen or more people had picked up and looked at, photocopied and passed

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[4] Government officials had received, by May 1990, close to 100 letters and postcards from citizens (including President George Bush) concerned about Charlotte May's welfare. *See* 43a.

[5] Any such orders must be made in writing. *See* Fla. Stat. Ann. § 39.411(5).

around, telecopied, removed, discussed, or otherwise learned of the contents of the Termination Order. *See* 61a-105a.

The results of the hearing were widely reported by the Florida news media the next day, when public interest in the outcome was at its peak. Jill Taylor of *The Palm Beach Post*, for example, reported the gist of Judge Kanarek's decision, writing that: "Cheryl Puffinberger did not 'substantially comply' with an agreement she made with [HRS] and faces permanent loss of custody of her daughter, according to a judge's ruling Tuesday." *See* J. Taylor, "Mom loses fight for daughter," *The Palm Beach Post*, May 30, 1990, reprinted at 49a. Petitioner also summarized the ruling, and included 54 words from its approximately 10 pages of factual findings in his news article. Specifically, the article reported that the Judge had found:

- that "Mrs. Puffinberger would 'make up excuses' to hide the abuse from state social workers monitoring the case in the months before Crystal's death[,]"
- that " '[t]he evidence clearly and convincingly shows that Cheryl Puffinberger did nothing to protect Crystal McGrath from the abuse and/or neglect by Carl Puffinberger,' " and
- that " '[t]he evidence further shows that Cheryl Puffinberger permitted Charlotte Puffinberger to live in an environment which caused the child's physical, mental or emotional health to be in danger.' "

See T. Roche, "Judge decides Puffinberger unfit to raise daughter," *The Stuart News*, May 30, 1990, reprinted at 52a.[6]

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[6] The 54 words quoted by Petitioner conveyed no new or startling information to the public, except the incidental suggestion that the

On June 8, 1990, Judge Kanarek wrote to the local State Attorney, asking him to investigate "disclosure of the Court's Order and the statements made by counsel" regarding it. *See* 55a-56a. In that letter, the Judge mentioned both the news article written by Petitioner and the article written by Ms. Taylor, and expressed his concern that "the disclosure of the Court's Order and the statements made by counsel may constitute violations of Chapter 39 and as a result be punishable as indirect criminal contempt." *See* 56a.

Four days later, the State Attorney began an official inquiry. *See* Investigative Report, Office of the State Attorney (Nineteenth Judicial Circuit of Florida) ("the Report"), reprinted at 61a. As the Report reveals, the State Attorney quickly found that the supposedly confidential order had been telecopied; that it had been photocopied and disclosed to persons lacking authorization to view it; that at least one unauthorized copy had been removed from the courthouse altogether and left in a car overnight; that

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Termination Order had not been treated as confidential by government employees. In fact, the three quoted findings were based on information that already had been admitted by the parties, alleged by public officials, described in public documents, reported by newspapers and television stations, and discussed in the community. The Judge's first determination, that Cheryl Puffinberger "made up excuses" to hide Crystal's abuse, is virtually indistinguishable from her earlier admission to a *Palm Beach Post* reporter that she had "lied to the HRS worker assigned to check on Crystal, telling her everything was fine when it wasn't." *See* 45a. His second finding, that Cheryl Puffinberger had failed to "protect" Crystal from her husband, simply repeated information that had been in the public domain since she had pleaded no contest to criminal neglect charges. *See, e.g.*, T. Roche, "9-month jail term handed down in fatal abuse case," *The Stuart News*, June 6, 1989, reprinted at 34a. Finally, Judge Kanarek's understated conclusion, that Cheryl Puffinberger had allowed Charlotte May to live in a dangerous and unhealthy environment, was patently obvious. *See, e.g., id.* (reporting that she had "allow[ed] her husband to punch, kick, slap and torture" Charlotte May's sister).

a facsimile copy received by HRS was missing; and that the Order had been widely discussed. *See* 61a-105a. Just how widely the Termination Order was disseminated or discussed, or how many copies existed, or where they were, or who had seen them, however, never will be known. For, despite the apparent violations of Fla. Stat. Ann. § 39.411 by government employees, a thorough, systematic effort to discover the full extent of distribution and communication of the Termination Order was not conducted.

Instead, while disregarding obvious avenues to address the Judge's concerns, the State's investigation focused solely on "the source of the 'leaking' of the confidential order to Tim Roche of the Stuart News." Report at 101a (Affidavit of Investigator David P. Powers (Sept. 7, 1990)).

Thus, for example, though courthouse employee Tammy Franklin admitted that she had asked for, received, and taken home an unauthorized copy of the Termination Order, she was not asked whether she had shown her copy to anyone, discussed it, or made additional copies. *See* 67a. Similarly, Julie Anne Roddenberry-Sherman, a Circuit Court supervisor who lacked authorization to review the Termination Order, nevertheless was given a copy and read it. *See* 68a. Despite her admission, investigators did not ask her whether she had shared her copy, discussed it, or made additional copies. *See id.*

Juvenile Clerk Carol Tilton—who made the unauthorized copy for Ms. Franklin and permitted Ms. Roddenberry-Sherman to read the copy filed by the Judge—at first lied to investigators, telling them she had not shown the Termination Order to anyone and that "she had not xeroxed any additional copies." *See* 67a. It was only after interviews with Ms. Franklin and Ms. Roddenberry-Sherman proved these statements to be false that investigators, upon advising Ms. Tilton that she had committed perjury, learned the extent of her earlier misrepresentations. *See* 68a. No further questions were asked of her, however. *Id.*

The Report also shows that while attorneys Karen O'Brien Steger and Ron Smith were asked whether they had disclosed the contents of the Termination Order to Petitioner, they were not asked whether they had disclosed its contents or given copies to anyone else. *See* 69a. Questions posed to the attorneys' partners and staffs were similarly abbreviated. *See, e.g.*, 69a. No one from the Judge's personal staff was questioned at all.

The State's investigative efforts at HRS were even more cursory. Investigators made almost no effort to identify the person who made two copies of a facsimile received in West Palm Beach, and never did identify that person or find the missing facsimile. *See* 74a, 90a. The Report also states that several HRS employees known to have had access to the Termination Order were interviewed, *see* 89a, but, oddly, contains no information about either the subject or scope of these interviews. *See id.* Other "leaks" of concern to Judge Kanarek were not addressed at all.[7]

By the end of August, the investigation was at a standstill. On August 28, 1990, Judge Kanarek telephoned the State Attorney's office and requested that "Tim Roche be subp[oenaed] to give a statement—and upon Tim Roche's refusal—[that the State Attorney's office] apply for an order to Show Cause." *See* 100a.

Two days later, the prosecutor obliged, and served upon Petitioner an investigation subpoena commanding him to identify the person or persons who had disclosed a copy of the Termination Order to him. This would begin the

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[7] *See* Report at 94a (though investigators determined that a reporter at *The Palm Beach Post* "might have obtained the contents (but not the hard copy) of the [Termination] Order," they did not question her further after she "declined to discuss the issue of whether she had, in fact, obtained any information from any source on the date in question").

only prosecution ever initiated as a result of the investigation. No subpoenas ever were issued to court or HRS personnel, attorneys, or the parties. Statements made to reporters by counsel, which Judge Kanarek also had complained about, were neither addressed nor scrutinized.

B. The Proceedings Below.

On September 6, 1990, Petitioner moved to quash the subpoena and for a protective order. In its Memorandum in Support of Order to Show Cause, the State argued that the subpoena should not be quashed because:

> The closure of trials and the sealing of records serves the purpose of limiting sensational "newsworthy" media exposure which serves no valid public purpose. The legislature and the courts place such a high value on the protection of the rights and interests of children that they are willing to limit even the freedom of press.

See R103. Without citing any authority, the State also argued that it had a "compelling need to require Mr. Roche to reveal the source of the information" because "[t]he first amendment freedom of press must be weighed against the societal interest in protecting children. . . . The Florida Legislature adopted Chapter 39 to protect children, well-knowing that first amendment freedom of press existed, but did so because society's interest in protecting children outweigh [sic] the limited privilege." R104. In making this argument, the State confused the public's right of access to official records (to which no "privilege" applies) with Florida's qualified testimonial privilege for reporters. This confusion, as Petitioner repeatedly pointed out below, permeated—and tainted—the entire litigation of this case.

On September 18, 1990, at a hearing on Petitioner's Motion to Quash ("Motion"), the State argued not that a compelling interest would be served by forcing Petitioner

to reveal the identity of his source, but that, because Petitioner had gained access to and published portions of the Termination Order, he should be punished:

> What we have here today, Your Honor, is if we allow the press to go behind Judges' orders, to go behind the Florida Legislature and disregard Chapter 39, they simply then can violate the Judge's order at anytime they choose. Publish the order because they feel it is in society's interest to publish what the Judge said they could not. . . .
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> * * *
>
> . . . [Mr. Roche and *The Stuart News*] elected to be the ones that could flaunt it in the papers saying it was sealed but we got it anyway and we published it. . . . That is serious because it damages the children of this State.

R52-53, 59.

On October 20, 1990, The Honorable John G. Ferris denied Petitioner's Motion. Among the findings on which that decision was based were the following:

> * * *
>
> 2. . . . Tim Roche was not an authorized or designated person to *have possession* of said orders [sic].
>
> * * *
>
> 4. That there was no application to Judge Kanarek to release the report to Tim Roche or anyone on his behalf but that Roche nevertheless *obtained a copy* of the order and *printed substantial portions of it in his paper the next day.*
>
> * * *
>
> 8. Issue here is therefore joined on the provisions of the juvenile statutes along with Judge

> Kanarek's order as against the claim of Roche of the protection of the First Amendment. *Stated somewhat differently, can Roche unilaterally but deliberately violate an order of a Court of competent jurisdiction under the guise of the privilege and protection of the First Amendment*?

See 10a, 11a (emphasis added). The "order" Judge Ferris referred to in paragraph 8 did not exist. Apparently, his reference to a nonexistent order was based on his mistaken belief—prompted by the State's misrepresentations—that Judge Kanarek had issued an order sealing and prohibiting publication of the Termination Order. This misunderstanding, as well as the trial court's confusion as to what "privilege" was at issue, is reflected in Judge Ferris's statement that:

> . . . if the respondent, Roche . . . believed [that] . . . *the Kanarek order unconstitutionally violated the qualified privilege of the press under the First Amendment* and that he should not be barred from *possession* and *knowledge* of the contents of any order issued, he could immediately address his grievance to Judge Kanarek and if he received an unfavorable result, the Fourth District Court of Appeal is not distant either geographically or procedurally to address his grievance. Roche has shown no great urgency or need *to have published the prohibited story* the next day and none appears.

See 13a (emphasis added).

Thus, based on its misunderstanding of the facts and its confusion as to the law, the court held that: "the constitutional interest of Tim Roche *in his publication* of said order *well knowing that its contents prohibited it*" was "far outweighed" by "the protection of an important segment of our society" and the State's interest in "integrity

for the orders of the courts of competent jurisdiction." *See* 13a, 14a (emphasis added).

Judge Ferris then ordered Petitioner "to reveal the identity of the person who provided [him] with the order of Judge Kanarek within ten days from the date of this order." *See* 14a. At a show cause hearing on November 2, 1990, The Honorable Robert Makemson, having found that Petitioner had not complied with the Order entered October 20, 1990, found him guilty of indirect criminal contempt and sentenced him to 30 days in the Martin County Jail. R66.[8] A timely appeal was filed.

In its response to Petitioner's appeal, the State again confused two distinct areas of First Amendment jurisprudence, arguing that Petitioner had no "privilege" to obtain or publish the contents of the Termination Order, and that, as a result, he had no privilege to refuse to identify who it was that disclosed the Termination Order to him. *See, e.g.*, Answer Brief of Appellee at 15, 25. The Fourth District, equally confused, affirmed Judge Ferris's decision, holding that:

> We conclude, as did the trial judge, that the purposes served by maintaining the confidentiality of juvenile dependency and termination of parental rights proceedings were contravened by Roche's *disclosure* of the court order involved herein and that *such action on his part was not qualifiedly privileged.*

See 9a (emphasis added). The court denied Petitioner's Motion for a Rehearing on December 27, 1991.

Petitioner never has asserted that he had a "qualified privilege" to "disclose" 54 words of the Termination Or-

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[8] The State requested that Petitioner be found guilty of indirect criminal contempt—the punishment for violations of § 39.411—and also asked that he be sentenced to six months in the Martin County Jail. R105.

der. Nor has he argued that he had a constitutionally based right of "access" to the Termination Order. Instead, Petitioner has a constitutional right, grounded in the First Amendment, to publish official information, like the Termination Order, which he lawfully obtained. The State of Florida has sought to punish him for exercising that right. As the lead prosecutor told *The Miami Herald*: "When Tim published the contents of a sealed order, he violated the law." P. Long, "Stuart reporter may go to jail over source," *The Miami Herald*, June 5, 1992, at § 8, at 4. *See* State of Florida's Response to Petitioner's Request for Waiver of Rules of Executive Clemency and Application for Executive Clemency (Aug. 6, 1992) ("State's Response") at 13 ("Mr. Roche . . . violat[ed] the law by . . . print[ing] the order . . .").[9]

On February 6, 1992, a Notice to Invoke Discretionary Jurisdiction was filed in the Supreme Court of Florida. By a vote of 4-3, the court denied discretionary review and an opportunity for a rehearing on June 2, 1992.

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[9] The State no longer can pursue enforcement of Petitioner's contempt conviction or relitigate the reporter's privilege issue. The one-year statute of limitations for violations of Fla. Stat. Ann. § 39.411 ran on May 29, 1991. As a result, the investigation into the disclosure of the Termination Order is closed and cannot be reopened. Had Petitioner's sentence truly been entered for the purpose of acquiring testimony as to the identity of his source, Florida law would require that Petitioner's sentence now be vacated. *See In re Tierney*, 328 So. 2d 40 (Fla. Dist. Ct. App. 1976) (vacating sentence for contempt entered against reporter for her refusal to answer questions posed by a grand jury where, because she appealed, the grand jury was no longer in session); *see generally Shillitani v. United States*, 384 U.S. 364 (1966). In light of the fact that no purpose could now be served by his imprisonment, Petitioner filed an Application for Clemency to Florida's Office of Executive Clemency on July 2, 1992. In opposing that Application, the State argued, once again, that Petitioner "voluntarily violat[ed] the law" by "electing to . . . publish[]" portions of the Termination Order, and that his punishment was justified as a result. *See* State's Response at 12.

On June 5, 1992, Petitioner filed an Emergency Motion for a Stay of Mandate with the Chief Justice of the Supreme Court of Florida. That motion was granted on June 9, 1992. The stay expired at midnight on July 2, 1992. The State of Florida agreed not to jail Petitioner pending the completion and filing of an Application for Stay with this Court by July 14, 1992.

On July 14, 1992, Petitioner filed an Application for Stay to The Honorable Anthony M. Kennedy. On July 16, 1992, Justice Kennedy sought a response from the State. The Application was granted on July 22, 1992 and this Petition was timely filed.

C. How The Federal Question Was Presented.

Though seemingly litigated as a question of a news reporter's qualified privilege not to reveal the identity of a confidential source, this case was in fact adjudicated as a question of a reporter's right to publish lawfully obtained official information about a matter of widespread community concern.

As the decision below makes clear, and the arguments and out-of-court statements by State officials confirm, the State seeks to jail Petitioner for obtaining and truthfully reporting the contents of a widely disseminated, unsealed judicial order. Yet, "a penal sanction for publishing lawfully obtained, truthful information . . . requires the highest form of state interest to sustain its validity." *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 101-02 (1979). No such interest was at stake here. In an attempt to manufacture an interest of the highest order, the State tangled two wholly separate areas of First Amendment jurisprudence. For, as the record makes clear, the State's contention all along has been not that a compelling interest would be served by forcing Petitioner to reveal his source, but, rather, that he should not have learned and reported the contents of the Termination Order.

Petitioner's initial arguments were based on Florida's unequivocal common law, which grants to reporters a privilege to refuse to identify confidential sources unless the party seeking the information has demonstrated: (1) that the reporter has relevant information, (2) that it has exhausted all other avenues for the information, *and* (3) that a compelling interest will be served by forcing the reporter to reveal the source's identity. *See Tribune Co. v. Huffstetler*, 489 So. 2d 722, 723-24 (Fla. 1986); *Morgan v. State*, 337 So. 2d 951, 955-56 (Fla. 1976).[10] There was no dispute that Petitioner possessed relevant information, and this point was not litigated. Additionally, based on the sworn affidavit of a state investigator, *see* 101a, as well as that investigator's sworn testimony at the hearing on Petitioner's Motion, *see* R19-20, the State maintained that it had exhausted all alternative ways of determining who had "leaked" the Termination Order to Petitioner.[11] Based on these sworn statements (later shown to be inaccurate), Petitioner did not challenge the State's representations, and this point also was not litigated. Instead, both Petitioner and the State focused their arguments at the

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[10] More than 70 reporter's privilege cases have been litigated in Florida's courts since *Morgan* was decided in 1976. Until now, no trial or appellate court decision forcing a reporter to reveal a confidential source ever has been upheld—or even denied review—by the Supreme Court of Florida.

[11] It became apparent in 1992 that the State had done no such thing. Until the statute of limitations on the alleged crime committed by Petitioner's source ran in May 1991, the State Attorney's investigation was presumptively "active" and documents pertaining to it therefore were exempt from disclosure pursuant to Florida's Public Records Act. *See* Fla. Stat. Ann. § 119.07 (West 1991). Thus, at the time Petitioner moved to quash the subpoena, and at the time he litigated his appeal in the Fourth District Court of Appeal, he was unaware of the incomplete nature of the State's investigation. When the Report became available to Petitioner and the public, it became clear that the State's investigation had not been thorough and that the investigator's testimony that all "alternative sources" had been pursued was disingenuous at best.

trial and appellate levels on the third prong of Florida's qualified privilege law. *See* R80-85, 104.

In attempting to satisfy its burden on this issue, the State ignored the only interest truly at stake (the orderly administration of justice) and instead characterized the interest to be served by forcing Petitioner to reveal his source as a generalized interest in the protection of the privacy rights of Florida's children. R104;[12] *see, e.g.*, R59; Answer Brief at 23. In so doing, the State mischaracterized an ordinary records-keeping statute, designed to regulate State employees, as a legislative prohibition on publication.[13] *See, e.g.*, R59 (at the hearing on Petitioner's Motion to Quash, the prosecutor argued that, despite the fact that Petitioner had learned the contents of the Termination Order, he nevertheless should have challenged "the sealing of the order" before publishing it, "and . . .

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[12] Unable to rely on Florida's reporter's testimonial privilege law, which provides that such "generalized" interests are insufficient to overcome a reporter's right to shield the identity of a confidential source, the State relied instead on an inapposite access case and an aberrational contempt case concerning a reporter's deliberate violation of a specific court order directed solely at her. *See In re Adoption of H.Y.T.*, 458 So. 2d 1127, 1128-29 (Fla. 1984); *Mayer v. State*, 523 So. 2d 1171, 1176 (Fla. Dist. Ct. App. 1988).

[13] The Florida legislature intended no such construction. Indeed, Petitioner never has challenged the constitutionality of Fla. Stat. Ann. § 39.411, because it plainly does not prohibit newspapers from publishing the contents of records relating to termination proceedings. Instead, like more than 300 other Florida statutes, it simply exempts a particular category of official records from public disclosure. *See, e.g.*, Fla. Stat. Ann. § 370.07(6)(a) (West 1992) (exempting reports from wholesale dealers of salt-water products showing "the names and addresses of persons from whom or to whom saltwater products are purchased or sold, the quantity so purchased or sold from or to each vendor or purchaser, and the date of each such transaction"). *Compare* Fla. Stat. Ann. § 794.03 (West 1992) (punishing as a misdemeanor the printing, publication, or broadcasting of any "fact or information" tending to identify a victim of a sexual offense in any "instrument of mass communication").

failed to do so. If there was so wide interest of publicity [sic] in this order and in this case then that interest would have remained when the appellate court reached their [sic] decision. It would have remained six months from now, six weeks from now . . .''). Likewise, in support of its argument that "the State's interest in protecting participants[,] particularly children in these proceedings from publicity, is paramount to the media's first amendment right to access to court proceedings," Answer Brief at 27-28, the State relied on the appellate court ruling in *The Florida Star v. B.J.F.*, 499 So. 2d 883 (Fla. Dist. Ct. App. 1986), *review denied*, 509 So. 2d 1117 (Fla. 1987), *rev'd*, 491 U.S. 514 (1989), which it insisted was reversed by this Court on "other grounds." Answer Brief at 28.

Petitioner repeatedly attempted to clarify this "confusion worse confounded,"[14] arguing, for example, that while what the State characterized as his "publication of improper matters" could be censured by civil actions for libel or invasion of privacy, the publication could not, "consistent with the First Amendment," be censored. *See* Appellant's Reply Brief at 4 n.1.

The State's legal arguments—and the factual inaccuracies and misrepresentations on which they were based—apparently confused the court below, which concluded that Petitioner's jail sentence was appropriate because he lacked a "privilege" to include quotations from the Termination Order in his news story.

~~Though~~ the State may argue that it did not intend the result it has so relentlessly pursued, its briefs, its oral arguments, and the public statements made by its representatives all demonstrate, forcefully, that it believes that

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[14] J. Milton, *Paradise Lost*, book ii, l.995 (1667).

punishing Petitioner for his reporting is perfectly proper.[15] Thus, having repeatedly argued that Petitioner should be punished for publishing the contents of a judicial order, and having secured trial and appellate rulings permitting such punishment, the State cannot now retreat from the federal law question *it* created. "It is irrelevant to this Court's jurisdiction whether a party raised below and argued [the] federal-law issue that the state supreme court actually considered and decided." *Cohen v. Cowles Media*

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[15] The federal question before this Court does not actually implicate Florida's qualified testimonial privilege for reporters. The evidence relating to the second part of the three-part test for the reporter's privilege is rife with factual misrepresentations and inadequacies, and the State's argument relating to the third part of the test was so misfocused that it produced a record devoid of any analysis of the correct state interest at stake. The record, therefore, is wholly unsuitable to a review of the constitutional issues surrounding the reporter's privilege, an area of law now richly developed by statutory, constitutional, and common law in 38 states and by federal common law in 11 circuit courts. *See generally United States v. Lopez*, 1987 U.S. Dist. Lexis 11115 (E.D. Ill. 1987) (surveying authority); *Newton v. National Broadcasting Co.*, 109 F.R.D. 522, 526-29 (D. Nev. 1985) (same); Note, *Developments in the Law: Privileged Communications*, 98 Harv. L. Rev. 1450, 1600 (1985).

Moreover, since this case did *not* arise from the investigation of a high crime, it bears little resemblance to traditional reporter's privilege cases. Since at least 1972, no Florida or federal court has upheld an order forcing a reporter to disclose a source, except in cases involving high crimes such as murder, kidnapping, and assassination threats against the President of the United States. *See, e.g., Branzburg v. Hayes*, 408 U.S. 665 (1972); *In re Grand Jury Proceedings*, 810 F.2d 580 (6th Cir. 1987); *Lewis v. United States*, 517 F.2d 236 (9th Cir. 1975). In cases involving lesser crimes, such as government leaks, courts have declined to force disclosure, particularly where, as here, the government could have discovered the information it purported to want and simply refused to do so. *See, e.g., In re Grand Jury Proceedings*, 766 F. Supp. 358 (W.D. Pa. 1991), *aff'd*, 963 F.2d 567 (3d Cir. 1992) (*en banc*). In electing to pursue Petitioner, the State merely used its subpoena power as a pretext to punish Petitioner for learning about and quoting from the Termination Order.

Co., 111 S. Ct. 2513, 2517 (1991) (citations omitted); *see generally Norris v. Alabama*, 294 U.S. 587, 590 (1935).

REASON FOR GRANTING THE WRIT

The First And Fourteenth Amendments To The United States Constitution Forbid The State Of Florida From Punishing A Journalist For Reporting The Contents Of A Widely Disseminated Court Order.

The narrow question presented for review is whether a government, unwilling to police the derelictions of its employees, may elect instead to prosecute a news reporter for tacitly bringing this official carelessness to the attention of the community.

This question is both simple and hardly new. History shows that government officials repeatedly have attempted to censure—through civil and criminal penalties—the publication of truthful information illustrative of official error.[16]

Nor does the answer to the question require fresh furrows in the First Amendment landscape. For, in an unbroken line of cases resting on principles as old as the

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[16] An early controversy involved James Franklin—publisher of the *New England Courant* and older brother of Benjamin—in 1722. *See* S.J. Ervin, *In Pursuit of a Press Privilege*, 11 Harv. J. on Legis. 233, 234 (1974). There, the Massachusetts Assembly had taken umbrage with a series of "several stinging pieces" that had "allegedly libeled the government." *Id.* (citing B. Franklin, *Autobiography* 10 (H. Weld. ed. 1848)). Franklin refused to identify the author of the stories, and was jailed for a month. *Id.* Upon his release, he was forbidden to ever publish the *Courant* again. *See* N.Y.L. Revision Comm'n., *Report, Recommendations and Studies* 70 (1949). As Thomas Jefferson would observe roughly a century later: the press is "first shut up by those who fear the investigation of their actions." Thomas Jefferson to John Tyler, June 28, 1804, *reprinted in Thomas Jefferson: Writings* 1146, 1147 (1984).

Republic, this Court has held that the truthful publication of lawfully obtained official information may not be punished absent proof that the sanction imposed is "narrowly tailored to [serve] a state interest of the highest order. . . ." *The Florida Star v. B.J.F.*, 491 U.S. 524, 541 (1989); *see also Daily Mail*, 443 U.S. at 101-02; *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838 (1978); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491 (1975). No such interest is at stake here.

A. This Court's Recent Decision In *Florida Star* Commands Reversal Of The Decision Below.

Three years ago, this Court held that the publication of a rape victim's name could not subject a Florida newspaper to damages in a privacy suit decided on a theory of negligence *per se*. *See Florida Star*, 491 U.S. at 541. That "limited" holding was based on the settled constitutional rule that "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order," and this Court's determination that "no such interest [was] satisfactorily served . . . under . . . the facts of this case." *Id.*

A similarly narrow holding is warranted here, and summary reversal is appropriate. *See Easton Publishing Co. v. Boettger*, 493 U.S. 885 (1989); *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977).

In *Florida Star*, the plaintiff, a private figure who had been robbed and raped at knifepoint by an attacker then still at large, was identified in a news story in violation not only of a Florida criminal statute, but also of the newspaper's own internal policies. Angry and frightened, she brought suit against the newspaper and the Sheriff's Department whose employees had erroneously, if inadvertently, made her identity available to the public and press. A Florida jury awarded her $100,000 in compensatory and punitive damages, and the newspaper appealed.

This Court, resolving the matter within "the discrete factual context" in which it arose, reversed, holding that " '[I]f a newspaper lawfully obtains truthful information about a matter of public significance[,] then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.'" *Florida Star*, 491 U.S. at 533 (quoting *Daily Mail*, 443 U.S. at 103). No such interest had been asserted there, this Court held, because (1) government carelessness had permitted a newspaper reporter to acquire the court record lawfully; (2) the "extreme step" of imposing liability on a newspaper for its truthful publication of an event of community interest was neither warranted by the facts of the case nor "narrowly tailored" to serve a compelling interest; and (3) when "a state attempts the extraordinary measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing this interest by applying its prohibition evenhandedly," which it cannot do by punishing "media giants" for disseminating the information, while declining to punish public employees or private individuals for the same wrong. *See Florida Star*, 491 U.S. at 534-40.

Integration of this "delicate calculus" here, *see Daily Mail*, 443 U.S. at 106 (Rehnquist, J., concurring in the judgment), commands reversal of the decision below. To draw the contrast with the three factors discussed in *Florida Star*, first, the governmental indiscretions preceding Petitioner's lawful acquisition of the Termination Order were far more egregious than the "inadvertence" of the Sheriff's Department in *Florida Star*. Second, the interest of the court in policing its employees, while important, is not as powerful as the privacy interests asserted in *Florida Star*. Third, the statute at issue here, while mandating the punishment of government employees, has been used by the State solely to punish a news reporter.

Thus, legally this case is indistinguishable from *Florida Star*, while factually it presents more compelling grounds for reversal. The official record at issue was not a police report whose publication jeopardized the safety of a previously anonymous rape victim, but an unremarkable court order summarizing information already in the public domain about a notorious child abuser. The news reporter's decision to quote 54 words of the official record did not violate either a Florida criminal law or his newspaper's internal policy, but, rather, brought authoritativeness to his news report, as well as the incidental suggestion that courthouse employees were not keeping secrets very well. And, finally, the litigation was not a civil suit instituted by an angry crime victim seeking redress from a newspaper and the government, but a contempt prosecution instituted against a reporter who exposed the carelessness of government employees. Indeed, the most striking similarity between the facts of this case and those at issue in *Florida Star* is that, in both, the prohibitions imposed by the State have "every appearance" of being prohibitions the government was "prepared to impose upon the press but not upon itself." 491 U.S. at 542 (Scalia, J., concurring in part and concurring in the judgment).

1. The Statute at Issue Places an Affirmative Duty on Government Employees to Shield Confidential Documents and Cannot Be Used as a Governmental Sword to Punish a Reporter when those Employees Disregard their Duties.

Where sensitive information rests in the government's hands, it is the responsibility of the government to protect its confidentiality. *See Florida Star*, 491 U.S. at 534. In Florida, where records concerning the termination of parental rights are to be kept secret, the obligation to protect their confidentiality belongs to the court and court employees. *See* Op. Fla. Att'y Gen. No. 91-32 (May 14, 1991). Courts have at their disposal a number of "internal procedures" that can be used for this purpose. *See Landmark*

Communications, 435 U.S. at 845. None was employed below.

Judge Kanarek, for example, had the authority to issue an order specially sealing the Termination Order, but chose not to do so. *See* R7-8. Similarly, the Juvenile Clerk had the duty to keep records like the Termination Order "separate from other [court] records" to maintain their confidentiality. *See* Fla. Stat. Ann. § 39.411(3). She chose not to do so. Instead, she made at least one unauthorized copy of the Termination Order, which she gave to a courthouse friend, and permitted at least one other courthouse friend to review the filed copy. *See* 67a-68a.

More copies of the Termination Order were subsequently made and read at the West Palm Beach office of HRS, which had received its copy via telecopier from the Stuart office of HRS, where it also had been read by "a number of HRS employees." *See* 86a. As the Report shows, no one at the court took any special steps to caution anyone at HRS to keep the information in the Termination Order confidential.

Nor were the attorneys representing the parties given any special instructions. Patricia Santiago, who represented HRS, brought another HRS employee with her to pick up the Termination Order, and, upon returning to her Stuart office, permitted at least four other persons to read it before telecopying it to the West Palm Beach office. *Id.* Counsel commented on the Judge's ruling in interviews with *The Palm Beach Post* and Petitioner. *See* 49a-52a.

No one knows whether any of the individuals known to have seen the Termination Order discussed its contents with family members or friends on May 29, because no one ever asked. Yet, in a small, closely-knit community like Stuart (population 12,000), where interest in the outcome of the Puffinberger case was enormous, it is not "[un]reasonable to assume" that information about the

Termination Order had traveled "swiftly by word of mouth" long before *The Stuart News* was delivered on the morning of May 30. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 567 (1976).

Information is either confidential or it is not: "Three may keep a Secret, if two of them are dead." B. Franklin, *Poor Richard's Almanack* (1735).[17] Once supposedly confidential information has been communicated to persons lacking authority to know it, the *raison d'etre* for confidentiality and the state interest it serves cease to exist. *See Florida Star*, 491 U.S. at 540 (refusing to predicate damages on the "mass scope" of a dissemination, where neighborhood gossip could have had "consequences" equally "devastating"). "[W]here the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release." *Id.* at 535.

Unlike government employees, Petitioner did not break the law by reporting portions of the Termination Order. Nothing in Fla. Stat. Ann. § 39.411 prohibited him from doing so; and, Judge Ferris's mistaken belief to the contrary, no court ever said he could not. *Compare* Fla. Stat. Ann. § 24.108(7)(b) (West 1991) (requiring "any person" in possession of information regarding security measures used in state lottery to "maintain its confidentiality"); *Mayer*, 523 So. 2d at 1176 (specific court order prohibiting publication violated by news reporter).

Moreover, Petitioner broke no law by receiving information about the Termination Order. *See Florida Star*, 491 U.S. at 536 ("Even assuming the Constitution permitted a State to proscribe *receipt* of information, Florida

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[17] *See Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374, 1379 (Fla. 1989) (child abuse report made confidential by statute became "legitimately within public domain" when prosecutor's secretary gave it to reporter); *see also Howard v. Des Moines Register & Tribune Co.*, 283 N.W.2d 289 (Iowa 1979), *cert. denied*, 445 U.S. 904 (1980).

has not taken this step") (emphasis in original). Indeed, no portion of Fla. Stat. Ann. § 39.411 prohibits receipt of copies of court records; the statute merely prohibits government employees from releasing them.

2. The Interests at Stake in *Florida Star* Were Far More Compelling than the Interest at Stake Below.

Florida's statutory and common law manifests even less concern for the privacy interest asserted here than for the interest asserted in *Florida Star*. The statute at issue here restricts disclosures of confidential information made by "judge[s], employee[s] of the court, authorized agent[s] of [HRS], or law enforcement agent[s,]" yet permits "a child and the parents or legal custodians of the child and their attorneys" to inspect and copy records—without restrictions of any sort. *See* Fla. Stat. Ann. § 39.411(3)-(4). In and of itself, this facial underinclusiveness would raise "serious doubts" as to whether the statute protects the "privacy rights" of children at all. *See Florida Star*, 491 U.S. at 540.[18]

Nor is the privacy interest asserted here protected by Florida's common law. For, though the State recognizes a cause of action for invasion of privacy based on the publication of private facts, it also specifically bars recovery where those supposedly "private facts"—even when contained in records made confidential by statute—are newsworthy. *See Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374, 1378-79 (Fla. 1989) (newsworthiness bars recovery for publication of child abuse records made confidential by state statute), *rev'g* 514 So. 2d 1136 (Fla. Dist. Ct. App. 1987), *cited in Florida Star*, 491 U.S. at 550 n.3 (White, J., joined by Rehnquist, C.J., O'Connor, J., dissenting).

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[18] *Compare* Fla. Stat. Ann. § 415.502(14)(c) (West 1992) (punishing as a misdemeanor the disclosure by "any person" of "any confidential information" contained in certain child abuse records).

Thus, the only interest at stake here is the orderly administration of justice—an interest that, while meaningful, is far less weighty than numerous interests (including those asserted by the plaintiff in *Florida Star*) that have been explicitly rejected by this Court as being insufficiently compelling to justify incursions on First Amendment rights.[19]

Finally, there is no proof anywhere in the record that any purported harm—real or imagined—actually occurred as a result of Petitioner's quotation of 54 words from the Termination Order. No lives were lost, no one's personal safety was threatened, no privacy interest was imperiled. Indeed, far from having a detrimental impact on the "orderly administration of justice," Petitioner's news story may have served a beneficial purpose. Six weeks after Petitioner's news story on the Termination Order, Judge Kanarek issued his final ruling in the Puffinberger matter, placing Charlotte May up for adoption. As *The Stuart News* then noted, this order was "delivered [to the court] in a sealed envelope marked 'confidential.'" *See* T. Roche, "Judge's custody ruling secret," *The Stuart News*, July 14, 1990, at A1.[20]

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[19] *See, e.g., Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 112 S. Ct. 501, 510 (1991) (interest in depriving criminals of the profits of their crimes); *Texas v. Johnson*, 491 U.S. 397, 417-20 (1989) (interest in preservation of flag); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607-10 (1982) (interest in well-being of minor rape victim).

[20] On June 1, 1990, two days after Petitioner's news article was published, Florida's open records law was amended to provide, in cases of child abuse, a "*presumption* that the best interests of a child and child's siblings . . . [would] be served by full public disclosure of the circumstances of the death of the child and any other investigation concerning the child and child's siblings." *See* 10a-11a. Thus, at the same time that the State was prosecuting Petitioner for supposedly violating the privacy rights of a child caught up in an abuse case, the Florida Legislature was enacting legislation designed to focus additional public scrutiny on child abuse cases.

3. No State Interest "Of the Highest Order" May Be Credibly Asserted Where Threats to that Interest Go Unpunished and Ignored.

Where, as here, "the government retains ample means of safeguarding significant interests upon which publication may impinge," yet permits its own employees to ignore them; and where, as here, a newspaper reporter has been arbitrarily singled out for punishment for disseminating information that has become public through that governmental indiscretion; and where, as here, the purpose of the reporter's dissemination was "to reproduce, with no substantial change, the government's rendition of the event in question," the First and Fourteenth Amendments prohibit a state from punishing the reporter for the publication. *See Florida Star*, 491 U.S. at 536; *id.* at 541-42 (Scalia, J., concurring in part and concurring in the judgment) ("a law cannot be regarded as protecting an interest 'of the highest order,' and thus as justifying a restriction upon truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited") (citation omitted); *Daily Mail*, 443 U.S. at 110 (Rehnquist, J., concurring in the judgment) (finding it "difficult to take very seriously" a state's "asserted need to preserve the anonymity of its youthful offenders" when the statute at issue prohibits newspapers from printing their names, but "permits other, equally, if not more, effective means of mass communication to distribute this information without fear of punishment").

Indeed, it is difficult to "take very seriously" Florida's asserted interest in protecting the privacy rights of a child, when the State failed even to inquire of its own employees where and to whom (other than Petitioner) they might have passed on information about the Termination Order—and took no action against any of them. Yet, where "a State attempts the extraordinary measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing this interest by ap-

plying its prohibition evenhandedly . . . ." *Florida Star*, 491 U.S. at 540. The State did not do so here.

B. Fundamental Constitutional Interests Are Seriously Threatened When A State Prosecutes A Reporter For His Truthful Publication Of A Widely Disseminated, Unsealed Order.

As the Supreme Court of Florida has recognized: "[t]he First Amendment is clearly implicated when government moves against a member of the press because of what [he] has caused to be published." *Morgan*, 337 So. 2d at 956.[21] Petitioner's quotation of 54 words, though conveying no new facts about a celebrated child abuse case, contributed a useful piece of information to the public's understanding of the operation of government.

> [F]reedom of the press is ultimately founded on the value of enhancing [public] discourse for the sake of a citizenry better informed and thus more prudently self-governed. '[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government

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[21] Here, "[t]he authorities would presumably never have learned of the breach of confidentiality" regarding the Termination Order "if they had not read [its] contents . . . in the newspaper." *Morgan*, 337 So. 2d at 956. *Compare* R9 (testimony of Judge Kanarek, in which he stated that he had learned that his "order had become known to the public" when he saw Petitioner's article in *The Stuart News*). Thus, had Petitioner viewed the Order, but decided against quoting it in his news story, the crime the State purports to prosecute still would have occurred, but may not have been prosecuted. This suggests that the State has impermissibly "exact[ed] a penalty on the basis of the content of a newspaper." *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 256 (1974); *cf. Simon & Schuster*, 112 S. Ct. at 514 (Kennedy, J., concurring in the judgment) ("When we leave open the possibility that various sorts of content regulations are appropriate, we discount the value of our precedents and invite experiments that in fact present clear violations of the First Amendment . . .").

> from limiting the stock of information from which members of the public may draw.'

Cohen, 111 S. Ct. at 2523 (Souter, J., dissenting) (quoting *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 783 (1978)).

"With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice." *Cox Broadcasting*, 420 U.S. at 492; *see also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 570-71 (1980); *Nebraska Press Ass'n*, 427 U.S. at 586-87 (Brennan, J., concurring). That beneficial function cannot be performed where, as here, the publication of truthful reports about judicial proceedings carries with it the probability of official harassment and the possibility of jail. *See NAACP v. Button*, 371 U.S. 415, 433 (1963) ("The threat of sanctions may deter [the exercise of First Amendment freedoms] almost as potently as the actual application of sanctions"). The danger of the decision below rests in the virtual certainty that some reporters in Florida will separate what they know from what they publish. And where truth is restricted, mystery and distortion take its place. *See* T. Paine, *The Age of Reason* (1795).

Respectfully submitted,

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APPENDIX

Supreme Court of Florida

TUESDAY, JUNE 2, 1992

CASE NO. 79,295

IN RE: INVESTIGATION: FLORIDA STATUTE 27,04, SUBPOENA OF TIM ROCHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

DISTRICT COURT OF APPEAL, 4TH DISTRICT NO. 90-3071

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

BARKETT, GRIMES, KOGAN and HARDING, JJ., concur
SHAW, C.J., OVERTON and MCDONALD, JJ., dissent

Hon. Marilyn N. Beauttenmuller, Clerk
Hon. Marshal Stiller, Clerk
Hon. John G. Ferris, Judge

BH

cc: Robert L. Lord, Jr., Esquire
Bruce W. Sanford, Esquire
Anne R. Noble, Esquire
L. Martin Reeder, Jr., Esquire
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Bruce Colton, Esquire
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A True Copy
TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court

District Court of Appeal of Florida,
Fourth District.

No. 90-3071.

In re INVESTIGATION: FLORIDA STATUTE 27.04, SUBPOENA OF Tim ROCHE,

Appellant,

v.

STATE of Florida,

Appellee.

Nov. 13, 1991.
Certification Denied Dec. 27, 1991.

DOWNEY, Judge.

This case involves a consideration of the tension between the constitutional right of the public to unencumbered access to information from anonymous sources and the generalized governmental interests in protecting the secrecy of juvenile proceedings from public scrutiny. More particularly, the case focuses upon a determination of the priority of societal interests in requiring certain proceedings to remain confidential as opposed to a reporter's privilege against coerced disclosure of confidential sources.

The controversy underlying this appeal began in November, 1988, when three-year-old Crystal Lynn McGrath was tortured and beaten to death at the home of her mother, Cheryl Puffinberger, and her stepfather Carl Puffinberger. In January, 1989, amidst widespread publicity, Cheryl and Carl Puffinberger were both arrested on ag-

gravated child abuse charges. Later that year Carl Puffinberger was sentenced to ten years' imprisonment for aggravated child abuse, while Cheryl Puffinberger pleaded no contest to neglect charges based on her failure to report the violence leading to Crystal's death and received a nine-month jail term. In November, 1988, after Crystal's death, her half-sister, Charlotte May Puffinberger, an infant, became a ward of the state and HRS sought to terminate the parents' parental rights. Carl Puffinberger relinquished his parental rights. In May, 1990, after a termination hearing, Judge Kanarek found Cheryl Puffinberger to be unstable and unfit and entered an order terminating her parental rights. This order was officially closed to public inspection pursuant to statute. A news story about this decision appeared the following day, May 30, 1990, in The Stuart News written by appellant Tim Roche.

On August 30, 1990, a subpoena was issued requiring Roche to give testimony in an action styled: In Re Investigation: Florida Statute 27.04, wherein the state attorney sought to investigate the apparent statutory violation in the public disclosure of the contents of the court's order in said proceeding. Roche filed a motion to quash the subpoena and for a protective order. Pursuant to a motion by the state, the trial court issued an order directing Roche to show cause why he should not be held in contempt for failing to answer questions regarding the state's investigation as to the source and identity of the person who provided Roche with the confidential order issued by Judge Kanarek. Following an evidentiary hearing on the matter, the trial court entered an order requiring Roche to reveal the identity of the person who provided him with a copy of Judge Kanarek's confidential order within ten days. The order further provided that, if Roche failed to comply, he was adjudicated guilty of indirect criminal contempt and sentenced to thirty days in the Martin County Jail, provided however that he could purge himself of the contempt at any time by complying with the court's order. On Oc-

tober 31, 1990, the state filed its affidavit of noncompliance with the court's order and Roche was adjudicated guilty of indirect criminal contempt. Roche then filed a notice of appeal from the trial court's order.

The parties agree that sections 39.411 and 39.467, Florida Statutes (1989), require that proceedings terminating parental rights are protected and not subject to public scrutiny. Furthermore, they acknowledge that under the auspices of the first amendment to both federal and state constitutions a reporter has a qualified privilege not to disclose his sources of information. *CBS, Inc. v. Cobb*, 536 So.2d 1067 (Fla. 2d DCA 1988). As the rule itself provides, the privilege is not absolute and may of necessity, in certain situations, give way to a greater right such as the societal interest served by the mandate that certain proceedings remain private and confidential. When presented with a conflict between these competing interests, the trial court must strike a proper balance between the reporter's constitutional right to the anonymity of his sources and society's interest to be protected by compelling disclosure. The criteria for determining the necessity of disclosure as set forth in *Cobb* are:

> (1) whether the information sought is relevant to issues in the case; (2) whether any alternative source exists for the information; (3) whether there is a compelling interest in the information. Only if all three questions can be answered in the affirmative may a journalist be required to relinquish or disclose privileged matters.

Id. at 1070.

The Supreme Court of Florida analyzed the balancing test and its proper application in *Miami Herald Publishing Co. v. Morejon*, 561 So.2d 577 (Fla.1990), while discussing the seminal case of *Branzburg v. Hayes*, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972):

> The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions.

Id. at 579. The application of the rule was further explicated by the *Morejon* court in analyzing two Florida decisions, *Morgan*[1] and *Huffstetler*[2] as follows:

> Since *Branzburg* this Court has twice had occasion to consider the existence and scope of the reporter's privilege in Florida. In *Morgan v. State*, 337 So.2d 951 (Fla.1976), this Court overturned a contempt citation issued against a reporter for failing to reveal the identity of the source of information for her article, published in the *Pasco Times*, containing a synopsis of a sealed grand jury presentment. In deciding whether Morgan was privileged to refuse to reveal her source, this Court adopted the approach taken by Justice Powell in his concurring opinion in *Branzburg*, i.e., the application of the reporter's privilege in a given case involves striking a proper balance between constitutional and societal interests. We found that the public interest in unencumbered access to information from anonymous sources outweighed the generalized governmental interest in the secrecy of grand jury proceedings sought to be advanced in compelling disclosure of the confidential informant's identity. Thus, in *Morgan* we recognized for the first time a limited or qualified reporter's privilege against the forced revelation of confidential sources.

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[1] *Morgan v. State*, 337 So.2d 951 (Fla.1976).

[2] *Tribune Co. v. Huffstetler*, 489 So.2d 722 (Fla.1986).

> This Court further addressed the qualified reporter's privilege recognized by *Morgan* in *Tribune Co. v. Huffstetler*, 489 So.2d 722 (Fla.1986), which arose out of a challenge to a contempt citation issued against a *Tampa Tribune* reporter. The reporter coauthored a *Tribune* article announcing that an influential resident had filed a complaint with the ethics commission charging two county commissioners with misuse of office. When the reporter refused to reveal the identity of his confidential source, the circuit court found him guilty of contempt. This Court overturned the contempt citation. Following the case-by-case balancing analysis utilized in *Morgan*, we held that the limited and qualified privilege that a reporter has to protect his sources of information outweighed the public interests in prosecution of a violation of a statute which basically amounts to a private interest in reputation.

Id. at 579-580.

In passing, we note that the state relies to some extent on the *Morejon* case. However, other than setting forth the guidelines relevant to determining the balancing test applicable to a reporter's qualified privilege not to disclose his confidential sources, we find little factual similarity to this case. In *Morejon* the reporter divulged what he personally observed and not what was told to him by some private source. Thus, as the supreme court said therein:

> We adhere to the district court's conclusion that there is no privilege, qualified, limited, or otherwise, which protects journalists from testifying as to their eye-witness observations of a relevant event in a subsequent court proceeding. The fact that the reporter in this case witnessed the event while on a news-gathering mission does not alter our decision. Holding that the limited and qualified privilege set forth by this Court in *Morgan* and *Huffstetler* has absolutely

> no application in this case makes it unnecessary to balance the respective interests involved.

Id. at 580 (footnote omitted).

The parties agree further that requirements one and two of the balancing test were met in the trial court presentation; issue was joined there and here in regard to requirement three. Roche contends that, under the facts of this case, there is no compelling interest in requiring him to divulge his sources because the privacy interests of this child have long since been blown, so to speak, by the earlier pervasive publicity surrounding the case and its background. Furthermore, Roche relies upon the cases of *Morgan v. State*, 337 So.2d 951 (Fla.1976), and *Tribune Co. v. Huffstetler*, 489 So.2d 722 (Fla.1986), wherein the Florida Supreme Court held that a generalized interest in the secrecy of government operations should not ordinarily take precedence over the interest involved in assuring the public access to information that comes to the press from confidential sources. Those cases, as pointed out earlier, declined to give priority to the law sealing grand jury indictments or the law providing confidentiality in dealing with ethical violations of public officials.

Appellee responds initially by calling attention to the fact that in both *Morgan* and *Huffstetler* the real interest sought to be protected was private and not of sufficient moment to outweigh the importance of the first amendment right under consideration. However, the same cannot be said of the interest in protecting the rights of children which has always been of primary importance and given preferential treatment by the courts of this land. For example, in *In re: Adoption of H.Y.T.*, 458 So.2d 1127 (Fla.1984), the court upheld the constitutionality of section 63.162(1), Florida Statutes (1983), against a challenge by the press that the statute making adoption proceedings confidential did not outweigh the media's first amendment right of access to court proceedings. The court then rec-

ognized the "overriding public policy of protecting from harmful publicity parties to and the subject of adoption proceedings," the thrust of which proceeding is to serve the best interests of the child involved. It is noteworthy that in *H.Y.T.* the court expressly rejected the media argument that there had already been widespread publicity in the case affecting the child's right of privacy. That argument, said the court, "attempts to lay on the shoulders of the child the burden of proving a need for the protection the people of the state, through the legislature, have attempted to afford the parties to an adoption." *Id.* at 1129. Later, in *Mayer v. State*, 523 So.2d 1171 (Fla. 2d DCA 1988), the Second District Court of Appeal followed the ruling in *H.Y.T.* and concluded that, on the facts of that case, the privacy rights of minors as protected by the statutes involved therein took precedence over the media's first amendment rights involved.

We conclude, as did the trial judge, that the purposes served by maintaining the confidentiality of juvenile dependency and termination of parental rights proceedings were contravened by Roche's disclosure of the court order involved herein and that such action on his part was not qualifiedly privileged.

The order appealed from is therefore affirmed.

GUNTHER and FARMER, JJ., concur.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA

Felony Division

Case No.

IN RE: INVESTIGATION:
FLORIDA STATUTE
SUBPOENA OF
TIM ROCHE

ORDER

This matter is before the Court on Tim Roche's Motion to Quash Subpoena and Motion for Protective Order, and on State's Order to Show Cause.

The Court has heard the testimony of witnesses for the State and the argument of counsel and has had the benefit of helpful memoranda of law from both parties. The Court finds as follows:

1. Circuit Judge Paul Kanarek, of this Circuit, issued an order terminating parental rights in the "Puffinberger" case on May 29, 1990. This case was one which had previously attracted high media and public attention in its criminal actions.

2. Under Florida Statutes 39.411 and 39.467, such orders, and the proceedings leading to their issuance are designated confidential and available only to certain designated officials. Each statute has a provision allowing a Court to authorize disclosure when it deems proper and to punish by contempt any violations. Tim Roche was not an authorized or designated person to have possession of said orders.

3. Section 119.07 of Florida Statutes was amended by the Legislature's adoption of Sec. 119.07 (7)(b)(2)

effective June 1, 1990, which provides a *presumption* that the best interests of a child and child's siblings (our case here) will be served by full public disclosure of the circumstances of the death of the child and any other investigation concerning the child and child's siblings.

4. That there was no application to Judge Kanarek to release the report to Tim Roche or anyone on his behalf but that Roche nevertheless obtained a copy of the order and printed substantial portions of it in his paper the next day.

5. Roche admits refusing to answer after being subpoeaned by the State Attorney and disclosing the source of his obtaining of said order.

6. That investigators from the State Attorney have interviewed, under oath, over 22 persons who could possibly have been in lawful possession of said order and could not determine the source of the turnover of said order to Roche.

7. That it is important to the integrity of the Court system generally and to the process and judgments of the Court in particular that orders of the Court be obeyed by those charged with the responsibility of processing and safe-keeping the records and documents entrusted to their care and in accordance with the tenor and directive of the Statute and particular order involved.

8. Issue here is therefore joined on the provisions of the juvenile statutes along with Judge Kanarek's order as against the claim of Roche of the protection of the First Amendment. Stated somewhat differently, can Roche unilaterally but deliberately violate an order of a Court of competent jurisdiction under the guise of the privilege and protection of the First Amendment?

9. The answer lies in the balancing test articulated in Branzburg vs. Hayes, 408 U.S. 665, 925 Ct. 264 (1972) which provides:

> "The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions."

10. The societal interests in this case are, the obligation of all citizens to give relevant testimony with respect to criminal conduct, the investigation of a possible criminal violation of the Juvenile Justice laws, the violation of the umbrella of protection of the minor child who was the subject of an order of the Circuit Court having jurisdiction over the Subject matter of its order. The Constitutional interest in this case is the qualified privilege and the protection granted the press by the First Amendment as augmented by the presumption in Sec. 119.07(7)(a). This presumption was not in effect when Rouche published the order in question and in any event is a presumption which is not conclusive but is rebuttable and certainly envisions some sort of hearing. See Fla. Statutes Section 90.301. It is interesting to note that Judge Kanarek took 3 days of testimony before entering his findings and order.

In applying the *Branzburg* balancing test, the Florida Supreme Court has in *Tribune Co. vs. Huffsteler*, 489 So.2d 722 (Fla. 1986) and in *Morgan vs. State* 377 So.2d 951 (Fla. 1976) found that the constitutional interests outweighed societal interests, which amounted to protection of *private* interests, as reputation of the individual.

In this case the societal interests are enorously important to *all* citizens since the statutes involved are designed for the protection of juveniles from influences deemed harmful to their progress. Further , all citizens are concerned that orders from their Courts of competent jurisdiction will be faithfully, fully, and promptly obeyed until they are overturned by the proper higher authority. Any other course of conduct would be intolerable.

The proper statutory and constitutional officer, the circuit judge sitting in juvenile court, after conducting an extensive hearing, made certain findings concerning a minor under his protection, made to protect the best interests of the child in a very delicate situation. He made certain findings and a disposition and rendered his order confidential.

At this point, if the respondent, Roche, felt aggrieved at the procedure, believed the statute and the Kanarek order unconstitutionally violated the qualified privilege of the press under the First Amendment and that he should not be barred from possession and knowledge of the contents of any order issued, he could immediately address his grievance to Judge Kanarek and if he received an unfavorable result, the Fourth District Court of Appeal is not distant either geographically or procedurally to address his grievance. Roche has shown no great urgency or need to have published the prohibited story the next day and none appears.

A balancing between the constitutinal interests and societal interests as mandated by *Branzburg* indicates that the statutes in question and the Court order involved did not involve private interests or reputation but the protection of an important segment of our society and that integrity for the orders of the courts of competent jurisdiction is absolutely essential and

that these interests far outweighed the constitutional interest of Tim Roche in his publication of said order, well knowing that its contents prohibited it and made a unilateral decision, without submitting to balance tests, to publish.

Accordingly, it is

ORDERED AND ADJUDGED that Tim Roche's Motion to Quash Subpoena be and the same is hereby denied. It is further

ORDERED AND ADJUDGED that Tim Roche's Motion for Protective Order be and the same is, hereby denied. It is further

ORDERED AND ADJUDGED that Tim Roche is ordered to reveal the identity of the person who provided Tim Roche with the order of Judge Kanarek within ten days from the date of this order. If the respondent Tim Roche refuses to reveal the identity of the person after ten days from the date of this order, the Court Adjudges him Guilty of indirect criminal contempt in accordance with the Florida Rules of Criminal Procedure, and it is the judgement of this Court that in that event he serve 30 days in the Martin County Jail. It is further ordered that after the commencment of such confinement, if necessary, respondent Roche may immediately purge himself of said contempt by disclosing, under oath, to the Office of the State Attorney, of the 19th Judicial Circuit, the name and address of the individual from whom Roche obtained the Kanarek order. Said act shall constitute a complete and immediate purge and terminate the contempt and the remainder of any sentence.

DONE AND ORDERED at Fort Lauderdale, Florida, this 20th day of October 1990.

/s/ John G. Ferris
JOHN G. FERRIS.
Circuit Judge (Senior Judge)

Copies to:
Richard A. Barlow
Assistant State Attorney

Robert L. Lord Jr. Esq.

39.411. Oaths, records, and confidential information

* * *

(3) The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents or legal custodians of the child and their attorneys, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4) All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, or law enforcement agent shall be confidential and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, law enforcement agents, and others entitled under this chapter to receive that information, except upon order of the court.

(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

(6) No court record of proceedings under this chapter shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Orders permanently terminating the rights of a parent and committing the child to a licensed child-placing

agency or the department for adoption shall be admissible in evidence in subsequent adoption proceedings relating to the child.

(b) Records of proceedings under this part forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(c) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

(d) Records of proceedings under this part may be used to prove disqualification pursuant to ss. 110.1127, 393.0655, 394.457, 396.0425, 397.0715, 402.305, 402.313, 409.175, 409.176, and 959.06 and for proof in a chapter 120 proceeding pursuant to ss. 415.103 and 415.504.

39.412. Contempt

The court may punish for contempt any person interfering with the administration of, or violating, any provision of this part or order of the court relative thereto. Any child subject to deprivation of liberty pursuant to this section shall be entitled to representation by legal counsel, as provided in s. 39.071, at all stages of any proceedings under this section.

Department of Health and Rehabilitative Services

Interoffice Memorandum

TO: G. Peter Digre DATE: April 25, 1989
Deputy Secretary for Operations (OP)

FROM: Gerald D. Slavens
Inspector General (OSIG)

SUBJECT: Review of the Death of Crystal McGrath
District 9

Attached is the completed report on the above referenced case. Crystal McGrath (age $3^1/_2$) died on November 23, 1988. According to the medical examiner's report, Crystal died from internal bleeding caused by blunt trauma. The death was classified a homicide. Her parents were arrested and charged with aggravated child abuse. The department has had one prior abuse referral reported on Crystal in June 1988.

Based on the investigation, it was determined that the assigned protective services supervision counselor failed to see the child during home visits after July, 1988. The counselor subsequently resigned from her position with the department. Since the child's death, new evidence has revealed that Crystal was allegedly abused prior to and after the June 1988 referral. Recommendations have been made for the improvement of programmatic issues identified in the report.

If you need additional information, please contact me at 488-1225.

GDS/DC/mam

Attachment

Copy to: M. Powers (OSEA)
R. Williams (9DA)

Department of Health and Rehabilitative Services

Interoffice Memorandum

TO: Gerald D. Slavens DATE: April 24, 1989
Inspector General (OSIG)

FROM: Charles R. Piver
Investigator (D9IG)

SUBJECT: Death Review — Crystal McGrath
Case #11880330

INTRODUCTION

Crystal McGrath (DOB: 1/15/85) died at 8:20 a.m. November 23, 1988, the result of internal bleeding caused by blunt trauma. There were bruises on her face, buttocks, back and groin, ranging from 24 hours old to three days old. The case was ruled a homicide. Both parents were arrested and charged with aggravated child abuse.

BACKGROUND

Department involvement began on June 6, 1988 when the mother, Cheryl Puffinberger, brought Crystal to the Martin County Sheriff's office and reported that her husband, Carl Puffinberger, had been hitting Crystal with his hand and a belt. She gave the impression that this was the only incident of abuse. Crystal and her mother were transported to the Stuart, Florida HRS facility at approximately 1:00 p.m., where they were interviewed by Protective Investigator Barbara Ross and Sheriff's Dectective Vic Green. Ross and Green assessed the risk as "High." The risk assessment was reviewed and signed off by Ross' supervisor on June 8.

According to documentation, Cheryl alleged that Carl drank and smoked marijuana and may have experimented with "Microdots." She further alleged that Carl had recently been in the stockade for a parole violation involving a charge of possession of controlled substances.

On June 6, contact was made with the Child Protection Team, where Crystal was examined by Dr. Scheel at approximately 4:00 p.m. He found that the bruising on Crystal's forehead, hip, buttocks, face and back were consistent with child abuse.

On June 8, a petition for an injunction was filed to keep Carl away from Crystal. The petition read:

"On June 4, 1988, the child's stepfather Carl Puffinberger picked the child up by the hair on top of her head and threw her across the room. The child is frequently disciplined by Mr. Puffinberger using a belt on the child as well as his hand. The child has a large bruise on her buttocks, bruises on her back, left hip, forehead, left cheek and left lower jaw. Child states that her 'Dada' hit her on these areas."

The case was staffed for Early Services Intervention on June 8, 1988 and assigned to CYF counselor Sally Schulte. Schulte provided immediate services starting on this same day. The family was placed under HRS supervision by court order on June 20. Schulte completed her Initial Assessment on August 12 and her Case Plan on August 3. The Initial Assessment included a complete family composition and family relationship description.

Carl and Cheryl were living separately as Carl's parents were upset with Cheryl for reporting him for child abuse. Cheryl and Crystal were living with Carl's paternal aunt. Cheryl was pregnant at the time and near to term.

An arraignment hearing on the dependency petition was held on June 15 where Carl pled to the allegation. The June 6 injunction keeping Carl away from Crystal was

dissolved. Carl and Cheryl reconciled their differences, but remained living apart.

The referral was classified as a confirmed case of Child Abuse and closed out on June 28, 1988.

With Cheryl giving birth to Charlotte on July 1, Crystal moved into Carl's parents' home. With the dissolution of the injunction and the reconciliation, Carl also resided in the home. The state attorney's office declined to prosecute Carl on the one incident of child abuse.

Sally Schulte made approximately twelve family and home visits between June 8 and August 15, 1988. Subsequently, a risk assessment was completed with an overall rating of "Low." Schulte conducted approximately seven more home visits between September 1 and November 15, 1988. During this time, she was arranging for parenting classes, working on family finances and checking on general family conditions. After July 1988, Schulte did not actually see Crystal. On at least two of these visits, she was told that Crystal was either taking a nap or was at a neighbor's home.

On November 22, 1988, paramedics were called to Carl's parents' home because Crystal had stopped breathing. She was revived and transported to Martin County Memorial Hospital where she died the following day at 8:20 a.m.

An FPSS referral was made on November 22, 1988 for the above incident. The response priority was Immediate and the allegation was Severe Abuse/Neglect.

Both parents were interviewed by HRS and sheriff's investigators and denied abusing Crystal. Both stated, in separate interviews, that Crystal had fallen off the couch the previous Friday evening while sleeping at the paternal grandparent's house.

Charlotte was taken into custody at 10:00 a.m. on November 23 and placed in shelter. A medical examination

was conducted where she was found to have bronchitis, an ear infection and a throat infection. Appropriate medical treatment was administered.

The parents were arrested and charged with aggravated child abuse. A March 1989 hearing was held at which Carl pled guilty to the charge. Cheryl pled not guilty and a trial date is pending. Also in March 1989, a dependency hearing was conducted for the sibling daughter, Charlotte. She was adjudicated dependent and placed in foster care. Due to the conviction of Carl and the pending trial of Cheryl, no performance agreement has yet to be issued.

Evidence developed from neighbors after Crystal's death indicated that Carl had been allegedly abusing Crystal since October 1987. This contradicts Cheryl's assertion that Carl abused Crystal only on the June 1988 occasion. Additionally, interviews with neighbors alleged that they had seen bruises on Crystal for some three months prior to her death.

After the death, a case review was conducted by the protective service staff in Stuart, Florida. Schulte stated that she was unaware that she had to actually see the child. Schulte believed that all that was necessary was to meet with the family during her home and family visits. She was the only counselor who held that view.

Schulte resigned before any department disciplinary action could be taken. In her letter of resignation she stated that "if her cases had been properly monitored, her error in judgment might have been caught."

Mr. David Heaton became Schulte's supervisor in August 1988, when Schulte's unit was being dissolved. He met with her on at least a weekly basis to discuss her caseload. He reviewed her daily service logs and did not notice anything out of the ordinary. Schulte never surfaced any problems with the McGrath case.

FINDINGS

The case was first referred to HRS on June 6, 1988, and was immediately investigated by a protective investigator. Both parents were interviewed within the first 24 hours as required. Law enforcement was on the scene, initially, as Cheryl brought Crystal to the sheriff's office. The state attorney was verbally notified the next day. Although written notification is required within the first three days, there was no indication in the case file that this was done.

An assessment of high risk was determined on June 6, within the first 24 hours. As the family appeared to stabilize, a second assessment was completed on August 15 showing low risk. A complete family composition and family relationship survey was accomplished in Schulte's Initial Assessment.

A collateral contact with the Child Protection Team was made within the first 24 hours. Medical examination of Crystal showed that the injuries she received were consistent with child abuse. The case was staffed for Early Services Intervention on June 8 and services were initiated that day by CYF counselor Sally Schulte.

The family was formally placed under HRS supervision on June 20 by court order. Schulte completed her Initial Assessment on August 12 and her Case Plan on August 3. Neither were completed within 30 days as required.

District specific policy requires that in high risk situations, visitations must take place on at least a weekly basis. Schulte's field notes showed that she met this requirement while the risk was considered to be high.

The initial June 6 referral was classified as a confirmed case of child abuse and the case was closed on June 28, 1988. This was within the 30 day requirement.

There appears to have been some instability in the supervisory situation. Schulte's unit was being dissolved and

she received a new supervisor in August 1988. However, the new supervisor Mr. Heaton was Ross' supervisor when the first referral was initiated and a degree of continuity was maintained as he became Schulte's supervisor. There was supervisory review of the initial risk assessment, of the court petitions and an overall case record review prior to closure on June 28.

Schulte's impression that she did not have to see the child in question is contrary to both her training as a protective service counselor and to manual policy.

CONCLUSIONS

Crystal McGrath died a tragic death resulting from physical abuse, allegedly perpetrated by her parents. However, Protective Services Supervision Counselor Schulte did not complete the requirement to see Crystal during home visits. Manual policy states that "for low risk cases, the counselor should have at least one face-to-face contact monthly with each child under supervision." Evidence now indicates that Crystal was allegedly abused for several months prior to and after the June 1988 referral.

Further, information concerning the father's drug history and previous incarceration was not included in the court petitions to keep him away from Crystal. Although it is difficult to conclude what action may have been taken, this information combined with previous incidents of abuse should have been reported.

In her letter of resignation, Schulte claimed her cases were not properly monitored. This may have some validity. Seeing the child is so basic to the job at hand that her supervisor may have assumed it took place. It is however, a supervisory function to assure that policy and procedure are followed. The supervisor should have also noted that the data concerning Carl's drug usage was not included in the petition for the injunction.

RECOMMENDATIONS

Conduct a review of all of Schulte's cases to assure she carried out her visitation functions correctly.

When visiting a household, the counselor must see the child in question as stated in the manual.

Supervisors must ensure that all requirements are adhered to by staff under their supervision.

Per district policy, supervisors must conduct case reviews on a monthly basis. This should be done more frequently if the situation dictates.

Protective investigators and CYF counselors should be encouraged to interview neighbors and family members on all child abuse referrals, even if medical examination substantiates the abuse. These contacts could provide additional information to assist with service planning.

IN THE SUPREME COURT OF FLORIDA

CASE NO.:

LOWER COURT CASE NO. 90-3071

IN RE INVESTIGATION: FLORIDA STATUTE 27.04
SUBPOENA OF TIM ROCHE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

AFFIDAVIT OF JANE DOE,
CHARLOTTE MAY PUFFINBERGER'S FOSTER PARENT

STATE OF FLORIDA
COUNTY OF MARTIN

1. I was the foster parent of Charlotte May Puffinberger and I believe it is imperative that my identity remain undisclosed so as to protect the safety and welfare of Charlotte May. The Department of Health and Rehabilitative Services ("HRS") placed Charlotte May in my custody on December 1, 1989. I have since sought to protect Charlotte May from harm in any way possible.

2. I have been a foster parent for four years. I have had in my custody and care four foster children, and have cared for six other children at the request of HRS. I have adopted three children through the HRS foster care program.

3. In November 1988, after the death of her half-sister Crystal, Charlotte May Puffinberger became a ward of the state. I gained custody of Charlotte May on December 1, 1989.

4. Cheryl Puffinberger, Charlotte May's mother, sought to regain custody of Charlotte May while HRS sought to terminate her parental rights. Because Cheryl Puffinberger was charged with and found guilty of only a misdemeanor child neglect charge, I felt her chances of regaining custody of Charlotte May were quite good. I felt, however, that placing Charlotte May back with Cheryl Puffinberger could result in endangering her. I was deeply concerned about protecting Charlotte May from further neglect, and concerned that what had happened to Crystal could happen to Charlotte May. I was advised by another foster parent that the best way to ensure that this case was handled as a priority by HRS and the court was to keep the case alive in the media, thus generating public concern for the welfare of Charlotte May and ensuring that HRS and the courts would act responsibly.

5. I was in constant contact with HRS, and monitored the case to ensure that Charlotte May's welfare was protected. When I gained custody of Charlotte May, I realized that the local HRS officials had had difficulty in making this case a priority with HRS officials in Tallahassee the entire year that Charlotte May had been in foster care. I realized that nothing was being done by state officials to prepare for the upcoming custody hearing. I also learned that local HRS officials had not been able to obtain funding from the state to conduct psychological evaluations on Cheryl, Charlotte May and others. The delay concerned me because these evaluations (called "psychologicals") are crucial to the custody decision. Soon thereafter, on January 15, 1990, *The Stuart News* published an article entitled "The Bottom Line: A Child's Life." A copy of this article is attached to my affidavit. I believe the article was instrumental in creating public awareness and concern for Charlotte May and in placing pressure on state HRS officials to approve funding for the psychologicals. Approval was forthcoming after *The Stuart News'* article ran.

6. I felt that public awareness was crucial to creating public concern, which would in turn place pressure on HRS and the courts to give this case the priority it warranted. A local church printed a fact sheet which was distributed to approximately 500 local residents. A copy of the fact sheet is attached to my affidavit. The fact sheet explained Charlotte May's predicament and the threat that she might be returned to her mother and subjected to future abuse. It included a news article written by Tim Roche and Betsy Gunderson of *The Stuart News*, and it listed names of legislators and other public officials whom members of the public could write to demand that Charlotte May be protected. I relied on Tim Roche, *The Stuart News* reporter covering this story, and on *The Stuart News*, to keep this case alive, because I was afraid that otherwise Charlotte May's case would slip through the cracks.

7. HRS initially assigned an attorney who had never handled a termination case and who had only recently graduated from law school to handle Charlotte May's custody case. Additionally, the guardian ad litem appointed to protect Charlotte May was not an attorney. Because of pressure from me and the pressure maintained by media coverage of this case, a more experienced attorney was assigned by HRS to handle the termination of parental rights case and an attorney ad litem was appointed to protect Charlotte May's interests.

8. I have also learned that prior to the termination hearing, HRS received more than 50 letters from concerned citizens and that the judge handling the case received as many post cards requesting that Charlotte May be placed in a good home.

9. In my heart, I know that the press, Tim Roche and *The Stuart News* played vital roles in helping insure that Charlotte May did not remain with Cheryl Puffinberger. I did not feel that Cheryl received the help she needed to ensure Charlotte May's safety. I therefore believe that

Charlotte May's life could have ended tragically like Bradley McGee's, the little boy who was killed by his stepfather after being returned to his parents by court order. Bradley didn't have the benefit and protection of public pressure on HRS and the courts generated by press coverage. I made sure that Charlotte May did.

/s/ Jane Doe
JANE DOE, Foster Parent of
Charlotte May Puffinberger

The forgoing instrument was acknowledged before me this 4th day of February 1992 by JANE DOE, Charlotte May Puffinberger's foster parent who is personally known to me or who has produced a Florida Driver License as identification and who did take an oath.

/s/ Judith A. Sonia
Notary Public
State of Florida
Name:
/s/ JUDITH A. SONIA

My commission expires:

THE STUART NEWS

Monday, January 15, 1990 SECTION B

The bottom line: A child's life

Custody case swirls around Puffinberger girl

By Tim Roche of the News staff

STUART—More than a year after her older sister was beaten to death, Charlotte May Puffinberger is waiting for a permanent home.

Her custody case remains unsettled; her future still uncertain.

But the thought of returning the 18-month-old youngster to her abusive parents has begun to frustrate the community around her.

At least one foster family has dropped out of the state's beleaguered child-welfare system. Charlotte May had been the first and the last needy child in the family's care.

A local church group also has launched a letter-writing campaign to discourage state officials from risking the life of another child for the sake of reuniting an abuse-torn family.

Charlotte May has been a ward of the state since she was about 4 months old, since the day in November 1988 when her half-sister, Crystal Lynn McGrath, was killed.

Crystal would have turned 5 today.

Her parents, Carl and Cheryl Puffinberger, were sent to jail last summer after pleading no contest to child abuse charges. The mother has since been released, and has taken steps to show state social workers that she's fit to raise Charlotte May.

Carl Puffinberger's mother and stepfather, Alice and Alvin Hoopaugh, also want custody. They've been talking

to social workers for months, hoping they can raise their granddaughter while Carl serves out his 10-year prison term.

The issue may be resolved in March by Circuit Judge Paul Kanarek.

Meanwhile, state officials have been inundated with letters asking them to monitor the custody case.

The Rev. Gary Durham, senior pastor at the Stuart Church of the Nazarene, said more than half of his 275-member congregation has taken an interest in Charlotte's case by writing legislators and senior administrators of the state Department of Health and Rehabilitative Services.

"If you make a little noise, you might get a little attention," Durham said last week. "We're not trying to become judge and jury. We're just saying that somebody has got to be aware of the dangers involved here. A child's life could be at stake."

George and Gayle Swift, who kept Charlotte May for a year before deciding to leave the foster care program, said the terrified look they remembered in Charlotte's wide blue eyes forced them to get involved.

"The only thing that could be worse than what happened to Crystal is letting Charlotte go back to her parents," Gayle Swift said last week. "We don't want Crystal's death to be in vain. We would hope the hell Crystal went through would be enough. It's not worth taking another risk."

In the month and a half since the Swifts asked HRS to place Charlotte with another family, they've become outspoken foes of Florida's child-welfare system. They've written letters to several lawmakers, including state Sen. William G. "Doc" Myers, R-Hobe Sound.

They received a typed note from Myers last week in which the senator said he would write a letter of his own to HRS.

"Along with the letter goes my insistence that the (custody) decision be based on one of mature judgment and not a straight return to the mother or grandparents," Myers wrote. "We are in the process of making this clear in the statutes during the next (legislative) session."

Despite the promises, an 11-year-old Port St. Lucie boy feels state legislators aren't doing enought to protect abused children. So Sean Salas recently sat down at the kitchen table with a pencil and notebook paper to write President Bush.

"I don't know why the government knows about such things and will let other children be sent back to the very parents that killed that child's brother or sister," the sixth-grader wrote in his letter. "The laws must be changed to protect us kids."

Cheryl Puffinberger's lawyer, Ronald Smith of Stuart, has said Cheryl is trying to change her life. She wants to start over—this time without Carl.

"A lot of people seem to know where the child should live," Smith has said. "But the truth is that she belongs with her mother."

HRS has mapped out a plan for Cheryl to follow before she can be considered for custody. The plan, called a performance agreement, includes suggestions to make her a better parent.

Smith has said Cheryl reported her former husband for abuse five months before Crystal died, but Martin County Sheriff's investigators failed to pursue the case.

As a result of the report, however, HRS assigned a social worker to help rehabilitate the family.

The social worker, Sally Schulte, made some 19 visits to the Puffinberger home in the months after Cheryl reported the abuse. But Schulte never saw Crystal.

In her resignation letter after the youngster's death, Schulte said she was unaware of agency policy requiring face-to-face contact with abused children in her care. She blamed supervisors for not monitoring her caseload.

In March 1989, HRS formalized its process of reviewing cases. Supervisors now make specific inquiries about the status of every case, writing down the responses from social workers to document what's happening.

In light of the public whipping HRS has taken statewide, some members of the agency have said they can understand the recent concern over Charlotte May.

"The community is still up in arms over her sister's death," said HRS spokeswoman Cam Freedlund. "People do what they have to do to protect the children of their community. Everybody's goal is the same here, and that's to protect Charlotte."

FACT SHEET

This is an extract from the *Stuart News* related to the homicide of Crystal Lynn McGrath. This information is provided in an effort to accurately depict the events of this case.

Charlotte May Puffinberger, sister of Crystal, is caught in the middle of a custody battle between Cheryl Puffinberger (her mother) and the Hoopaughs (Carl Puffinberger's mother & step-father).

Carl is currently serving a 10 year prison sentence for second degree aggravated child abuse. Cheryl was sentenced to 9 months for misdemeanor charges (already served). There has been no "termination of rights" of either parent.

THE STUART NEWS

June 6, 1989

9-month jail term handed down in fatal abuse case

By Tim Roche of the News staff

STUART—A judge Monday sentenced Cheryl Puffinberger to nine months in county jail for allowing her husband to punch, kick, slap and torture her $3^1/_2$-year-old daughter, Crystal Lynn McGrath, before the child's death last fall.

Puffinberger, 24, last week pleaded no contest to reduced charges of misdemeanor child abuse after reaching an agreement with prosecutors. She had been charged with child abuse by neglect, a felony.

"There's nothing that anybody can do to bring the child back, and there's nothing anybody can do to punish you anymore," Circuit Judge Robert Makemson told Puffinberger during the sentencing.

The judge said he felt compelled to send a message that child abuse must be reported.

Puffinberger likely will be jailed for a little more than five months, attorneys said. The judge ordered that she receive credit for the three months she's already served since her arrest.

Her husband, Carl, was sentenced to 10 years in prison in May after he pleaded no contest to aggravated child abuse for beating Crystal between Oct. 1, 1987, and Nov. 21, 1988.

Prosecutors last week said murder charges in Crystal's death seem unlikely. Investigators have found evidence that both Puffinbergers were abusive to the child.

The youngster reportedly told conflicting stories on Nov. 22, the afternoon that she was taken to Martin Memorial Hospital. Crystal first told nurses her mother had abused her, then later pointed the finger at her stepfather.

"The truth of that child's death lies in heaven," Assistant State Attorney John Spiller said. "The punishment for that child's death rests in the county jail."

Cheryl Puffinberger had been expected to be sentenced to a year in the Martin County Jail as part of the plea bargain with prosecutors.

But her attorney, Ronald Smith of Stuart, asked the judge to be lenient Monday.

"I see no other reason other than pure punishment to put her back in jail," Smith said. "She's suffered enough."

Puffinberger told the judge Monday that she was trying to rebuild a lost relationship with an 11-month-old daughter placed in foster care after the mother's arrest in January.

Every week since she was released on $1,500 bail in April, Puffinberger said she has visited the youngster, Charlotte May. She hopes to be reunited with the child once she served her time in jail.

In arguing for a shorter sentence, Smith said the state Department of Health and Rehabilitative Services, would limit Puffinberger's visits with Charlotte May to once a month while the mother is in jail.

Charlotte May's future remains legally tangled as well. A county judge will consider this summer whether the youngster should live with her paternal grandparents.

Carl Puffinberger's mother and stepfather, Alice and Alvin Hoopaugh, said Monday that they have asked for temporary custody while the child's parents serve time in jail.

But Spiller, the prosecutor, said he didn't think Cheryl Puffinberger would be ready for parenting again after serving five or six months in jail.

Spiller said he has interviewed a witness who overheard Cheryl Puffinberger scream obscenities at Charlotte only

a week after the child was born. Spiller, however, has no jurisdiction in family court.

The Hoopaughs, who attended Monday's sentencing, have said they knew that Crystal was being abused by her mother and stepfather.

On Monday, they said Carl Puffinberger was taking the blame for his wife.

"I know Carl told her not to worry if it ever came down to them filing murder charges," Alice Hoopaugh said.

The Hoopaughs also said they considered Cheryl Puffinberger's sentence to be too light.

"They give one of them 10 years and one nine months. That's not fair," Alvin Hoopaugh said. "If they don't know who did it, give them both 10 years."

THE STUART NEWS

March 10, 1990

State: Couple unfit to parent

By Tim Roche of the News staff

STUART—State welfare officials said Friday they're taking steps to place 1 1/2-year-old Charlotte May Puffinberger for adoption by asking a judge for court hearings in which the youngster's parents would be declared unfit and lose their custody rights.

Janice Gammill and Patricia Santiago, attorneys for the state Department of Health and Rehabilitative Services, notified Circuit Judge Paul Kanarek of their intentions during a closed-court hearing Friday in Stuart.

Charlotte May has been a ward of the state since she was about 4 months old, since the day in November 1988 when her half-sister Crystal Lynn McGrath was killed.

Her parents, Carl and Cheryl Puffinberger, were sent to jail last summer after pleading no contest to child abuse charges in connection with the death. The mother has been released and was in court Friday to ask the judge to be reunited with her child.

But HRS attorneys said Friday that Cheryl Puffinberger still hasn't met the standards outlined in a "performance agreement" with social workers who've been monitoring the case.

Cheryl Puffinberger hasn't demonstrated that she's able to be rehabilitated into being a good parent, Gammill said.

Gammill said HRS next plans to send documents telling Carl Puffinberger, who's serving a 10-year term in Marion Correctional Institution in northern Florida, that his parental rights also may be jeopardized.

Charlotte May would be eligible for adoption if the judge so rules after a two-part hearing in which HRS attorneys will present evidence supporting their recommendation, Gammill said.

But Ron Smith, a Stuart attorney representing Cheryl Puffinberger, said Friday that the mother intends to battle HRS over custody of the youngster. He refused to elaborate, citing state statutes that prevent him from discussing the pending custody case.

"What I can tell you is that Cheryl has been working with HRS on their performance agreement," Smith said. "Cheryl is doing her best. She's being going to classes and everything. She's been doing what they've wanted her to do."

Carl Puffinberger's mother and stepfather, Alice and Alvin Hoopaugh of Stuart, also want custody. They've been talking to social workers for months, hoping they can raise their granddaughter while Carl serves out his 10-year prison term.

But the Hoopaughs said Friday that HRS hasn't taken them seriously. They vowed to fight the agency and the judge if Charlotte is put up for adoption.

"HRS has got to whop me till I can't breathe to take that child away," said Alvin Hoopaugh, 30. "They're trying to take a part of my life from me. I'm not going to stop fighting. If I have to sell my house, I will. I'll get another job if I have to."

In the meantime, state officials said they've been inundated with letters asking them to monitor the custody case.

The Rev. Gary Durham, senior pastor at the Stuart Church of the Nazarene, has said more than half of his 275-member congregation have taken an interest in Charlotte's case and have written to legislators and senior HRS administrators.

"If you make a little noise, you might get a little attention," Durham has said. "We're not trying to become judge and jury. We're just saying that somebody has got

to be aware of the dangers involved here. A child's life could be at stake."

George and Gayle Swift, who kept Charlotte May for a year before deciding to leave the foster care program, have said the terrified look they remembered in Charlotte's wide blue eyes forced them to get involved.

"The only thing that could be worse than what happened to Crystal is letting Charlotte go back to her parents," Gayle Swift has said. "We don't want Crystal's death to be in vain. We would hope the hell Crystal went through would be enought. It's not worth taking another risk."

THE STUART NEWS

May 18, 1990

Fight for kid begins

Puffinberger says she's fit to parent

By Tim Roche of the News staff

STUART—Cheryl Puffinberger clutched a tissue and blotted away tears she shed for the two daughters she lost 18 months ago—one girl to an abusive husband, she says, and the other to the state's foster-care system.

In an interview Thursday, Mrs. Puffinberger talked about lessons she has learned since the November 1988 beating death of her oldest daughter, 3½-year-old Crystal Lynn McGrath. She also talked about how she'll try to persuade a judge next week to reunite her with her other daughter, 1½-year-old Charlotte May Puffinberger.

"I would like to think I could get a second chance to parent Charlotte," she said. "I think it's going to be bitter next week. I'm trying to prepare myself the best I can."

Wearing a locket with a miniature photograph of Charlotte, Mrs. Puffinberger talked to reporters for the first time since Crystal's death. During the interview at her attorney's office, there were no questions she wouldn't answer. Several questions provoked a steady stream of tears.

At a court hearing Monday and Tuesday, Mrs. Puffinberger will challenge the state Department of Health and Rehabilitative Services in its effort to terminate her parental rights. HRS has asked Circuit Judge Paul Kanarek to place Charlotte May up for adoption.

HRS attorneys have described Mrs. Puffinberger as an unfit mother, saying she hasn't met standards outlined in a "performance agreement" with social workers monitoring the case. The requirements included attending parenting classes, assertiveness courses and special counseling.

Charlotte May has been a ward of the state since her sister died Nov. 23, 1988. She visits her mother for 30

minutes every week in a social worker's office at the HRS center on East Seventh Street in Stuart.

The last time the youngster was living with her mother, she began flipping from her back to her stomach. Now she's walking and practically talking.

"That's what I think visitation is good for—getting to know my daughter. Not only bonding with her, but getting to know her," said Mrs. Puffinberger, 23.

Since her release from jail last September after pleading no contest to neglect charges, Mrs. Puffinberger said she's been thinking about the past and concentrating on the present.

For six weeks, she has had regular sessions with a Jupiter psychologist who is helping her overcome the loss of one daughter and separation from the other.

Still, she blames her former husband for both.

She said she believes Carl Puffinberger, whom she married in August 1987 and divorced last summer, killed Crystal by beating and kicking the youngster into convulsions.

Murder charges were not filed in the case because prosecutors said they were unable to determine which parent delivered the fatal blows. On her death bed at Martin Memorial Hospital, Crystal told one nurse that her mother had beaten her and another nurse that "the man who lives with mommy" was the one.

Mr. Puffinberger was sentenced to 10 years in prison in May 1989 after he pleaded no contest to aggravated child abuse charges. Police said he often tortured the youngster, punching her in the face and forcing her to stand on her head in the corner.

"I do have a lot of anger built up against Carl. I don't believe 10 years is enough for what he did to her," Mrs. Puffinberger said. "I know I didn't do it. My child was fine

when I left her with Carl. It was a heck of a shock to walk in and see bruises and tubes and everything at the hospital."

Mr. Puffinberger also will be the subject of next week's custody hearing. His court-appointed attorney, Steven Rogers, declined comment Thursday.

But in an interview last year, Mr. Puffinberger said he wanted his mother and stepfather to raise Charlotte May until his release from prison. He denied killing Crystal and directed accusations at his former wife.

Mrs. Puffinberger said she reported her former husband's violence in July 1988. She said she got little response from authorities, except for a state social worker who made some 19 home visits but never saw the children.

Now, HRS is trying to right its wrongs by taking the Puffinbergers to court, Mrs. Puffinberger said.

"If they had followed through, Crystal might still be here. Just like if I would've had the guts to report Carl again, Crystal might still be here," she said. "I think they're overreacting when they're trying to protect Charlotte from me. In my opinion, they're trying to make an example out of me."

Her attorney, Ronald Smith of Stuart, said Mrs. Puffinberger has met the conditions HRS set out in the performance agreement.

Smith contends that the agency is trying to terminate her parental rights because of the widespread community interest the case has drawn.

"I think Cheryl in the grand scheme of things is a fit parent. I've seen other kids go back to parents worse off than Cheryl with no termination of parental rights whatsoever," Smith said.

"It's obvious that HRS is saying, 'To make up for our mistake in Crystal's case, we've got to take this other child away to show people we're on the ball again.' "

But an HRS spokeswoman said Thursday that the agency is working for the child.

"We would never use a child for any kind of grandstanding effort. Our main concern is the child's safety and welfare," said Cam Freedlund of HRS district headquarters in West Palm Beach. "I think we were pretty upfront with the mistakes we made, and this in no way will take away from that tragedy.

"We've always had a commitment to children's best interest, and it's that commitment that will determine what course we'll take."

HRS has received more than 50 letters, including some from legislators, urging the agency to pursue adoption in the Puffinberger case. Kanarek, the circuit judge who will decide the child's fate, also has been swamped with letters and postcards.

The judge's judicial assistant, Sharon Puderer, said she's received as many as 45 postcards this week. They carry the same message: Remember Crystal in the quest to find Charlotte May a good home.

Mrs. Puffinberger said she, too, has adjusted to constant public criticism about the case. She's been harassed and called "baby-killer" to her face.

"For one thing, it hurts because these people know me by the papers. They don't *know* me," Mrs. Puffinberger said. "They don't know what I've been going through to get custody. They don't know if there's been any lessons learned."

No matter what happens next week, Mrs. Puffinberger said she'll continue to cope with her grief. And maybe one day, she'll be ready to buy a tombstone for Crystal's grave.

"That is like the final goodbye," she said. "I'm just not ready for that yet."

THE PALM BEACH POST

Friday, May 18, 1990

Mother who watched beatings wants daughter

Lawyer says woman not fit for custody

By Jill Taylor
Palm Beach Post Staff Writer

STUART—There is a tiny photograph of a smiling, blond-haired little girl in a locket around Cheryl Puffinberger's neck.

It is a picture of her daughter, Charlotte May, who will be 2 in July.

Next week, Martin Circuit Judge Paul Kanarek will be asked to decide whether Cheryl Puffinberger is fit to raise Charlotte.

"I would like to think that I could get a second chance," said Cheryl Puffinberger, who spoke publicly about her case for the first time Thursday.

She sees her daughter once a week in supervised visits at the state Department of Health and Rehabilitative Services office in Stuart.

Charlotte has been in foster homes since November 1988, when her $3^1/_2$-year-old half-sister, Crystal McGrath, was beaten to death.

Prosecutors called Crystal's death a murder and suspected her stepfather, Carl Puffinberger. But they said there wasn't enough evidence to prove the case in court and no murder charges were filed.

Carl Puffinberger pleaded no contest to beating Crystal before her death and is serving a 10-year prison term for aggravated child abuse.

Cheryl Puffinberger, 25, has since divorced Carl. She served six months in the Martin County Jail on a plea of no contest to a misdemeanor charge for failing to protect Crystal.

She had reported her husband for beating the child once but said Thursday she was afraid to report him again. She said he beat her, too.

"He would hit Crystal and then he would hit me because I would scream at him. He'd go, 'What are you going to do? Report me again?' "

Cheryl Puffinberger said she lied to the HRS worker assigned to check on Crystal, telling her that everything was fine when it wasn't. Cheryl Puffinberger said the case worker should have pushed a little harder and looked a little closer.

"If they had followed through, Crystal might still be here, just like if I'd had the guts to report Carl again, Crystal might still be here."

Attorney Karen Steger, who is representing Charlotte's guardian ad litem in next week's hearing, believes Cheryl's failure to protect her oldest daughter shows she is unfit to raise her youngest child.

"The child's best interests will be served by the child being placed for adoption," Steger said. "Mom knew what was going on. Mom protected Carl."

The medical examiner's report showed Crystal had 23 injuries, including three broken ribs and bruises over most of her body.

There were reports from neighbors after her death that they had seen bruises and witnessed some of the abuse, including times when Carl Puffinberger forced the child to stand on her head in the corner and beat her when she fell.

Cheryl Puffinberger said she saw her husband on different occasions whip the child with a belt, grab her by the hair, and throw her across a room. But she didn't recall the headstands and other incidents that were reported to investigators.

Cheryl Puffinberger said she never imagined her husband would become violent enough to kill Crystal. He told her Crystal had simply gone into convulsions.

"I mean it was one heck of a shock to walk in that hospital to see tubes and blood."

Crystal lived less than 24 hours after the beating.

Cheryl Puffinberger said she never knew the extent of the injuries and continued to believe the story about the convulsions until five months after the death, when she heard the details in a court hearing.

Attorney Ron Smith, who represented her in the abuse case and will also handle the custody issue, said Cheryl Puffinberger has worked hard since her release from jail to get a good job and do whatever HRS required.

A written agreement with HRS called for her to take classes in parenting skills and assertiveness training, and to see a counselor. She has complied.

THE STUART NEWS

May 23, 1990

Puffinberger child's future in judge's hands

By Tim Roche of the News staff

STUART—A judge will decide by Friday whether 1½-year-old Charlotte May Puffinberger should be reunited with her mother, who was jailed last year for not reporting the physical abuse that eventually killed the girl's older sister.

Circuit Judge Paul Kanarek could place Charlotte May for adoption if he sides with the state Department of Health and Rehabilitative Services in terminating parental rights to the youngster.

Kanarek listened to more than 12 hours of testimony in a special hearing that ended Tuesday after the girl's mother, Cheryl Puffinberger, took the witness stand for a third time.

Mrs. Puffinberger, 25, has said she hopes for "a second chance" to raise Charlotte May, whom she lost to the state's foster care program in November 1988 when her eldest daughter, Crystal Lynn McGrath, was beaten to death.

HRS attorneys have said Mrs. Puffinberger failed to meet standards outlined in a "performance agreement" with social workers monitoring the case. The hearing was closed to the public this week because of state laws requiring strict confidentiality in dependency matters.

"I hope the judge hangs his hat on the substantial compliance requirements in the performance agreement and the way substantial compliance is defined in the statutes," said Karen Steger, a Stuart attorney representing Charlotte's court-appointed guardian.

"Cheryl has still never acknowledged responsibility for anything, and it is our position that she could put the child back into an abusive situation again," Steger said. "It's

a really close call. It's hard to say how things went, but I feel better now than I have the last couple of days."

In the hearing, HRS attorneys presented evidence that Mrs. Puffinberger had given birth to three daughters in four years—two of whom died.

The infant deaths became an issue in the hearing this week as attorneys tried to portray Mrs. Puffinberger as unfit and unstable, Steger said. All three of Mrs. Puffinberger's children had different fathers, Steger said.

Charlotte May's father, Carl Puffinberger, gave up his paternal rights to Charlotte May minutes after the custody hearing began Monday. His attorney, Steven Rogers of Stuart, said Mr. Puffinberger hoped Charlotte May would be placed for adoption.

Mr. Puffinberger was sentenced to 10 years in prison last year after he pleaded no contest to aggravated child abuse charges for beating Crystal, his stepdaughter. Mrs. Puffinberger was given a nine-month jail term on neglect charges for not reporting the abuse.

Prosecutors were unable to file murder charges in the case because Crystal made conflicting statements on her deathbed. First she told a nurse that her mother abused her. Later, she said "the man who lives with mommy" was the assailant.

THE PALM BEACH POST

May 30, 1990

Mom loses fight for daughter

State will seek to place abused child for adoption

By Jill Taylor
Palm Beach Post Staff Writer

STUART—Cheryl Puffinberger did not "substantially comply" with an agreement she made with the state Department of Health and Rehabilitative Services and faces permanent loss of custody of her daughter, according to a judge's ruling Tuesday.

The order from Martin County Circuit Judge Paul Kanarek was sealed, but attorney Karen Steger, who represented the interests of 22-month-old Charlotte May Puffinberger in a hearing last week, said it brings the toddler a step closer to adoption.

"To know that this little girl is going to be safely placed—it's a great feeling," Steger said.

Cheryl Puffinberger could not be reached for comment. Her attorney, Ron Smith, did not return phone calls Tuesday.

HRS spokeswoman Cam Freedlund said she could not comment on the case other than to say that Kanarek's decision "is in the best interests of the child."

Charlotte has been in foster care since November 1988, when her 3½-year-old half sister, Crystal McGrath, died of injuries suffered in a beating.

Cheryl Puffinberger served about six months in jail for failing to report her husband's abuse of Crystal in the months before the child's death.

Carl Puffinberger is serving 10 years in prison for aggravated child abuse.

Prosecutors never filed murder charges in the case, saying they could not prove exactly when the fatal blows were struck and who was with the child at the time.

After her release from jail, Cheryl Puffinberger signed an agreement with HRS that she would attend parenting and assertiveness-training classes and counseling sessions.

In an interview earlier this month, Puffinberger said she finished the classes but said the counseling ended after about five sessions. Puffinberger said the therapist wanted her to admit to hitting Crystal and refused to schedule any more sessions when Puffinberger refused.

The therapist testified at a two-day hearing last week, but the courtroom was closed to the public.

Steger said it appeared Kanarek relied heavily on the legal definition of "substantial compliance" in his ruling.

The definition reads: "Substantial compliance means that the circumstances which caused the placement in foster care have been remedied to the extent that the well-being and safety of the child will not be endangered upon the child's being returned to the child's parent or guardian."

Although investigators believed Carl Puffinberger was primarily responsible for Crystal's injuries, Steger said there was nothing to show that Cheryl Puffinberger would do a better job protecting Charlotte than she did Crystal.

"Everything is basically the same as it was when Crystal died," Steger said.

In the earlier interview, Cheryl Puffinberger said she has divorced Carl and has no intention of marrying again any time soon.

"I know they are worried about something like that happening, especially if I should hook up with somebody that would turn out to be like another Carl," she said. "But, if I had a problem, I would assert myself instead

of becoming passive like I was in my relationship with Carl."

The next step is a disposition hearing set for June 15. At that hearing, Steger and HRS attorneys are expected to ask that Charlotte be placed for adoption.

However, Puffinberger has the option of appealing to the 4th District Court of Appeal.

THE STUART NEWS

May 30, 1990

Judge decides Puffinberger unfit to raise daughter

By Tim Roche of the News staff

STUART—A judge on Tuesday terminated parental custody rights to 1½-year-old Charlotte May Puffinberger, whose future has been uncertain since her older sister was beaten to death in November 1988.

Circuit Judge Paul Kanarek ruled that the youngster's mother, Cheryl Puffinberger, is unstable and unfit to care for her.

Kanarek criticized Mrs. Puffinberger for not reporting her former husband Carl Puffinberger's violent rages and abuse of 3½-year-old Crystal Lynn McGrath—her oldest child and his stepdaughter.

Crystal died of massive internal injuries including a ruptured spleen and three broken ribs.

Kanarek said Mrs. Puffinberger would "make up excuses" to hide the abuse from state social workers monitoring the case in the months before Crystal's death.

Mr. Puffinberger was sentenced to 10 years in prison for aggravated child abuse. Prosecutors never filed murder charges in Crystal's death because they said they were not able to determine which parent delivered the fatal blow.

Mrs. Puffinberger was sentenced to nine months in jail last year after pleading no contest to neglect charges for not reporting the violent acts that eventually caused her daughter's death.

"The evidence clearly and convincingly shows that Cheryl Puffinberger did nothing to protect Crystal McGrath from the abuse and or neglect by Carl Puffinberger," Kanarek wrote.

"The evidence further shows that Cheryl Puffinberger permitted Charlotte Puffinberger to live in an environment which caused the child's physical, mental or emotional health to be in danger."

Kanarek will determine in a special hearing June 15 whether to put Charlotte May up for adoption. That decision could be appealed to a higher court.

Kanarek's order was sealed from public inspection Tuesday because of state statutes requiring confidentiality in termination cases, but a copy was obtained by *The Stuart News/Port St. Lucie News*.

The ruling came a week after attorneys for the state Department of Health and Rehabilitative Services presented evidence showing Mrs. Puffinberger was not reformed enough to raise Charlotte May.

HRS attorneys accused Mrs. Puffinberger of not meeting standards set by a "performance agreement" that called for parenting classes and counseling before she could be reunited with her daughter.

Charlotte May has been in foster care since her sister died.

Mrs. Puffinberger declined to comment on the judge's decision late Tuesday afternoon, saying she was unaware of any order to eliminate her custody rights.

She referred questions to her attorney, Ronald Smith of Stuart. Smith did not return telephone calls Tuesday.

Mrs. Puffinberger said earlier that she hoped to be reunited with Charlotte May. She has said she wanted a "second chance" at raising the child.

Mr. Puffinberger gave up his parental rights to Charlotte May as the hearing to terminate custody began last week. His court-appointed attorney, Stephen Rogers of Stuart, applauded the judge's decision Tuesday.

"If she loved the child as much as he does, she would have consented to the termination like he did," Rogers said. "One of the reasons he even considered it was to be able to tell the full story, so that everyone would know the role she played in all the events. She's never been candid to this day about what happened to Crystal."

The ruling was welcomed by other child-welfare advocates who said they feared Charlotte May would be placed back in her mother's care where her future would be jeopardized.

"It would have been a travesty for the judge to give the kid back," said Stuart attorney, Karen Steger, who represented Charlotte May's court-appointed guardian. "Substantial compliance with the performance agreement was the key. That was the narrow area (the judge) had to address. I'm happy with the decision."

Pamela Kirkland said she, too, was pleased with the decision. Kirkland, a foster parent in Lakeland, Fla., has become one of the state's most outspoken critics of children services.

"It's hard every time a mother loses a child. But sometimes moms have to love their children enough to let them go," said Kirkland, whose foster son, Bradley McGee, was returned by HRS personnel to his parents in 1989. Bradley died shortly after the return when police say his father dunked the child's head repeatedly into a toilet.

"I hope the judge's decision would send a message that it's always best to err on the safety of the child," she said. "It should be child protection before reunification at all costs."

PAUL B. KANAREK
CIRCUIT JUDGE

Indian River County Courthouse
Suite 239
2145 14th Avenue
Vero Beach, FL 32960

(407) 567-8000

State of Florida
Nineteenth Judicial Circuit

June 8, 1990

Honorable Bruce H. Colton
State Attorney Nineteenth Judicial Circuit
P.O. Box 4401
Ft. Pierce, Florida

Re: In The Interest of: Charlotte Puffinberger
Case No. 88-981-A

Dear Mr. Colton:

I recently presided over a two day trial involving a petition to terminate the parental rights of Cheryl Puffinberger. On Tuesday, May 29, 1990, I entered an Order in that case. Copies of the Order were provided to Mr. Ronald Smith, attorney for Mrs. Puffinberger; Karen Steger, attorney for the Guardian Ad Litem; and to Patricia Santiago, attorney for Health and Rehabilitative Services. On Wednesday, May 30, 1990, the Stuart News published a story written by Tim Roche *which extensively quoted from my Order* and stated that the newspaper had obtained a copy of my Order. The Stuart News article also *quoted Karen Steger*. The Palm Beach Post also wrote an article which quoted Ms. Steger. [Hand underscoring in copy provided by State Attorney.]

Section 39.467(5), Florida Statutes (1989), provides that all hearings involving the termination of parental rights are to remain confidential and closed to the public. Section 39.471, Florida Statutes (1989) makes all court records closed from public inspection and also provides that information obtained by certain persons is to be confidential.

On June 4th I received a letter from Mr. Smith (a copy of which is attached) which included the newspaper articles which were written about this case. On April 5th I received a letter from Ms. Steger concerning this matter. I have enclosed a copy of this letter.

It appears that the disclosure of the Court's Order and the statements made by counsel may constitute violations of Chapter 39 and as a result be punishable as indirect criminal contempt. As the chief law enforcement officer of this circuit I request that you immediately investigate this matter and report your findings to the Court.

Sincerely,

/s/ Paul B. Kanarek
PAUL B. KANAREK

PBK/scp

cc: Karen Steger, Esq.
Ronald Smith, Esq.
Patricia Santiago, Esq.
Clerk of Court

STEWART/WAXLER & SMITH

AN AFFILIATION OF PROFESSIONAL ASSOCIATIONS
73 S.W. FLAGLER AVENUE
STUART, FLORIDA 34994
FAX: (407) 283-4396

June 1, 1990

Honorable Paul B. Kanarek
Circuit Court Judge
Indian River County Courthouse
2145 14th Avenue, Suite 239
Vero Beach, Florida 32960

Re: In The Interest Of: CHARLOTTE PUFFINBERGER
Case No. 88-981-A

Dear Judge Kanarek:

As an officer of the Court, counsel for Cheryl Puffinberger and in compliance with my ethical obligations, I am providing the Court with the following:

1. Headlines and article contained in The Stuart News dated Wednesday, May 30, 1990, written by Tim Roche.

2. Headlines and article contained in The Palm Beach Post dated Wednesday, May 30, 1990, written by Jill Taylor.

It is obvous that someone provided these newspapers and writers with a copy of your "confidential" Order rendered on May 29, 1990, after the two day "confidential" hearing.

Conspicuously, it appears that one "party" breached the confidentiality requirement and freely commented about this Court's ruling and what it means. This is in direct contempt of this Court's admonishment about confidentiality and in direct violation of Florida Statutes §39.467(5) and §39.471.

I am also enclosing copies of newspaper articles from the Stuart News of May 22nd and 23rd, 1990, in which, apparently, a State witness, Kevin Twombly, freely commented about what his testimony had been at the confidential hearing and in which, apparently, Karen Steger, Esquire, told reporter Tim Roche about certain aspects of what took place in the "confidential" hearing.

I think this Court should be very concerned about these direct, intentional breaches of the law and ethics and I would hope that this Court will exercise its substantial powers to determine what sanctions should be levied and against whom.

Sincerely,

/s/ Ronald B. Smith
RONALD B. SMITH

RBS/lr

cc: Patricia C. Santiago, Esq.
Karen O'Brien Steger, Esq.

STEGER & STEGER, P.A.

ATTORNEYS AT LAW
PHONE: (407) 287-8388
FAX: (407) 220-3518

SAM T. STEGER
KAREN O'BRIEN STEGER
JOSEPH NEGRON, JR.

SUITE 310
FLORIDA NATIONAL BANK BUILDING
301 EAST OCEAN BOULEVARD
STUART, FLORIDA 34994

June 5, 1990

Honorable Paul B. Kanarek
Martin County Courthouse
120 E. Ocean Blvd.
Stuart, FL 34994

RE: In The Interest of Charlotte May Puffinberger
Case No. 88-981 A
Martin County Circuit Court Case

Dear Honorable Judge:

In response to Ronald Smith's letter to you dated June 1, 1990, I am writing to tell you that I did not give a copy of the ruling on the above referenced case to Tim Roach or any other reporter. I told Tim Roach that in my opinion I could not disclose any aspects of the ruling pursuant to Florida Statutes. I said that the way I read the statute, no one is allowed to disclose any facts about the case.

Mr. Roach telephoned me on the evening the ruling came out and said that he was obtaining a copy of said ruling from someone else.

Further, I agree with Ronald Smith, that whoever gave a copy of the ruling and/or details of same should be sanctioned. However, it was not me.

Thank you for your attention to this matter.

Sincerely,

/s/ Karen O'Brien Steger
KAREN O'BRIEN STEGER

KOS:lwc

cc: Ronald Smith, Esq.
Patricia Santiago, Esq.

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

CASE INITIATION

INITIATED BY: CSAI David Powers
DATE: June 12, 1990

COUNTY OF ORIGIN: Martin
CASE #: S90/06010ISC

CASE TITLE: MARTIN COUNTY CIRCUIT COURT
CASE TYPE: Allegation of Criminal Contempt

REPORT BY: /s/ DPP
CSAI David P. Powers
APPROVED: _____
Chief Investigator

COPIES TO:

VICTIM:
NAME: _____
ADDRESS: _____
_____
TEL. # (home) _____
(bus) _____

SUSPECT:
NAME: _____
ADDRESS: _____
_____
TEL. # (home) _____
(bus) _____

SYNOPSIS: As per the direction of State Attorney Colton, an investigation was requested by Judge Paul Kanarek, Circuit Court Judge in Martin County, regarding the improper disclosure of Court Order in the Cheryl Puffinberger case.

CASE OPEN

OFFICE OF THE
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Nineteenth Judicial Circuit of Florida
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and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: June 13, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 2:00 P.M., June 12, 1990, conferred with State Attorney Colton regarding the above case with the following results.

The main issue appears to be identifying the individual responsible for turning over a copy of the sealed Court Order in the Cheryl Puffinberger case. This Court Order was quoted extensively by reporter Tim Roche of the Stuart News on May 30,. 1990. Extensive quotes by Attorney Karen Steger were also in the story as well as statements by HRS spokeswoman Cam Freedland.

State Attorney Colton directed that Chief Assistant State Attorney Dave Phoebus be assigned to the case to initially research the area dealing with the legal issues surrounding the confidentiality of information obtained by reporters. Upon completion of his review interviews will

be set up with all persons involved in the Puffinberger case.

INVESTIGATION CONTINUING

OFFICE OF THE
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Nineteenth Judicial Circuit of Florida
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and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: June 14, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 11:00 A.M. this date, the undersigned conferred with Chief Assistant State Attorney Phoebus regarding the subject case.

CASA Phoebus advised that he had spoken with Judge Kanarek regarding the preparation and dissemination of the mentioned Court Order with the following results: Judge Kanarek stated that the evening after the Puffinberger hearing he had prepared an original copy of the Order on his personal computer at his residence. The following day he brought this original to the Juvenile Clerk's Office for filing. Since Judge Kanarek was extremely concerned over the confidentiality of the Court Order he first went to the xerox machine outside of his office and personally xeroxed three (3) copies of said Order. These were then brought to the Juvenile Court Clerk and the three copies of the Order were sealed in an envelope and ad-

dressed to: 1) Attorney Karen Steger, attorney for Guardian Ad Litem, 2) Attorney Patricia Santiago, attorney for HRS and 3) Attorney Ron Smith representing Mrs. Puffinberger. The clerk, allegedly, then personally handed these envelopes to each attorney or representative. The only other copy (original) had been sealed by Judge Kanarek and turned over to the clerk for filing.

CASA Phoebus preliminarily spoke with the Juvenile Clerk (name unknown) who advised him that she had personally placed the sealed envelope in a locking cabinet and retained the only key to same. She further stated that she did not leave the office until the end of the business day and that no one had access to the cabinet.

It is anticipated that all persons coming in contact with the Order, both in the courthouse complex and various attorneys' offices, will be contacted and statements obtained by this investigator. CASA Phoebus will continue to research the area of possession of the sealed document by the Stuart News reporter, Tim Roche.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
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Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin DATE: June 15, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt REPORT BY: CSAI David P. Powers/sme

COPIES TO: APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At approximately 9:00 A.M. this date the undersigned was present at the Martin County Courthouse complex, East Ocean Blvd., Stuart, Flordia for the purpose of interviewing individuals having some form of contact with the Puffinberger Order.

As a matter of professional courtesy, first attempted to speak with Chief Clerk Marcia Stiller to advise her of the subject investigation and that members of her staff were to be interviewed as to their involvement in the subject case. Mrs. Stiller was not in at the time and her secretary, Elsie, directed me to Joanne Brown, Director of Criminal Services for Martin County Court. Arrangements were then made with Mrs. Brown to interview Juvenile Clerk Carol Tilton, the person who had received the Order from Judge Kanarek on the morning of May 29, 1990 and also Ms. Tammy Franklin, who also worked in the same office

as Mrs. Tilton on the day in question. Upon first contact, Mrs. Tilton was hesitant about giving an interview due to prior conversations with Marcia Stiller and Chief Assistant State Attorney Dave Phoebus. However, after speaking with CASA Phoebus on the telephone, she agreed to give the interview.

Ms. Tilton initially stated that she recalled Judge Kanarek arriving at her office on the day in question with an original and two (2) copies of the mentioned Court Order. Ms. Tilton then stated that she xeroxed another copy, placing each of the copies into an envelope and marked each with the recipient's name (Ron Smith, Karen Steger and Pat Santiago). She also recalled that Ms. Steger picked up the envelope in person as well as Ms. Santiago, who arrived with Ms. Betty Baum of HRS. Ron Smith's envelope was picked up by his secretary, Lynn Rusin. When asked if she had shown the Order to anyone, Ms. Tilton replied in the negative. She also stated she had not xeroxed any additional copies and had specifically not given a copy to anyone else, including reporter Tim Roche.

Upon completion of the Tilton interview, Ms. Tammy Franklin, who worked in the same juvenile office was interviewed with the following results. She stated that she recalled the day Judge Kanarek had come to the office and had talked to Ms. Tilton about the Order after the judge had left. Ms. Franklin advised that during this discussion about the contents of the Order, Ms. Tilton xeroxed a copy of said Order and gave it to her. She stated that she had started to read it but became busy and put it into her desk with her purse. It remained in her unlocked desk until the end of the business day when she removed it and took it home with her. She further advised that the Order remained in her automobile until the following day when she returned to work at which time she read the Order and returned it to Ms. Tilton, who then destroyed it.

Based upon Ms. Franklin's statements, another statement was taken of Ms. Tilton. She was advised that based upon her untrue statements under oath, she had, in fact, committed perjury. She then admitted that she had given a copy of the mentioned document to Tammy Franklin. She also stated that she had xeroxed an additional copy for Ms. Fromang (phonetic) of HRS who had asked her for a copy. Tilton stated that she had checked with Judge Kanarek if she could release it to Fromang. Judge Kanarek advised her that she could not so she destroyed that copy. Tilton then admitted that she had also allowed Julie Anne Rodenberry-Sherman, a Circuit Court supervisor to read the Order. No further admissions were made by Ms. Tilton and she had no answer as to why she had lied under oath.

Mrs. Rodenberry-Sherman was then interviewed regarding the Order. She stated that she had gone to the juvenile clerk's office and had spoken with Ms. Tilton. She had been shown the Order by Tilton, after which she returned it to her. She also recalled the following day, after seeing the news article written by Tim Roche, that Ms. Tilton had gotten upset over the fact that the information contained in the Order had been released to the press.

An interview was also conducted on a friend of Tammy Franklin's one, Brenda Chapman, also an employee at the Martin County Courthouse. She had no knowledge of the Court Order and had no contact that day with Ms. Franklin.

Ms. Janice Gammill, Senior Attorney with HRS - West Palm Beach Office, was also interviewed and advised that she had received a copy of the Order via fax machine at her West Palm Beach office. She recalled that the only three people other than herself, who had knowledge of the Order's contents, were a paralegal, Katherine Thomas, a public relations supervisor, Cam Freedlund and Ms. Gammill's immediate superior, Laurel Hopper. Ms. Gammill also recalled that reporter Tim Roche had previously called her

and she remembered that they had "a heated discussion" as to his attempting to obtain information regarding the Puffinberger case. She stated she had "chewed him out" over the phone and refused to discuss any aspect of the case which was presently in trial.

Ms. Lynn Rusin, secretary for Attorney Ron Smith, was interviewed and stated that she had picked up the envelope at the Clerk's Office, brought it back to her office and after opening it, placed it on Mr. Smith's desk. She recalls not xeroxing any copies at that time and absolutely not giving one to Mr. Roche.

On June 18th, 1990, statements were also obtained from Attorneys Karen Steger and Ron Smith as follows:

Ms. Steger stated that she had personally picked up the sealed envelope from Carol Tilton at the courthouse on May 29, time unknown. She did, however, state that Roche appeared at her office at approximately 6:15 P.M. and at that time had requested Ms. Steger give him a copy of the Court Order. After she refused, he stated that he knew where he could get a copy and that he would call her that evening when he got it. He called Ms. Steger at approximately 8:30 P.M. that same night and told her that he had obtained a copy from "someone at HRS," who he would not name. He did state that this individual viewed the statute differently than Ms. Steger.

On this same date, Attorney Ron Smith gave a statement indicating that he received his copy of the Order the afternoon of May 29th. He recalled making a copy for Mrs. Puffinberger but that this occurred a few days after the article appeared in the Stuart News. He did, however, recall that Tim Roche had called his office at 5:13 P.M. that date and left a message with the receptionist indicating if Ron Smith wanted to know what was in the Court Order, he would read it to him.

The above statements were taken under oath and have been transcribed for inclusion in the subject case folder.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: June 18, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 3:50 P.M. this date called Tim Roche (220-2007) and advised him that I wished to take a statement regarding the Puffinberger Court Order Issue. He advised that he had already anticipated this and spoke with his Managing Editor, Nancy Smith, who told him to refer everything to her. I was transferred to Smith who stated that Roche would decline to be interviewed.

Ms. Smith was asked who was the attorney for The Stuart News and indicated that it was Bruce Wilkerson, who was not aware of the circumstances surrounding the Puffinberger issue. She stated she would confer with Wilkerson and have him contact this office.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
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Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: June 19, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At approximately 2:30 P.M. this date received a telephone call from Katherine Thomas at HRS - West Palm Beach Office. She stated that upon checking with Administrative Secretary Ruby Parkinson, who handles the fax machine in the course of her daily duties, it was found that no fax log is maintained for paperwork being sent from that office.

INVESTIGATION CONTINUING

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and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: June 19, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At approximately 9:30 A.M., June 19, 1990, spoke with Ms. Janice Gammill, Assistant District IX Legal Counsel - HRS, West Palm Beach, telephone 837-5112, regarding individuals coming into contact with the Puffinberger Court Order after it had been faxed to the West Palm Beach HRS office.

Ms. Gammill advised that she had been present at the fax machine when her secretary (and paralegal), Katherine Thomas, had told her that an Order was coming through for her. The fax was received at 2:52 P.M., May 29, 1990. (Note: A copy was faxed to this investigator for inclusion in the case file.) The fax machine is located in the reception area of that office. After receipt, Ms. Thomas read the Order and gave it to Ms. Gammill. Ms. Gammill then showed it to Public Information Officer Cam Freedlund

and explained its contents. She also showed it to her supervisor, Laurel Hopper.

When asked if she still had the fax copy, she initially stated that she did, but upon closer inspection she found that her copy was a xerox and not a fax sheet(s). Although she does not recall why a copy was xeroxed, she believed that Ms. Hopper may have had Ms. [Thomas] copy one for her since fax copies tend to fade.

The HRS address is 111 Georgia Avenue, West Palm Beach, Flordia 33401.

Additionally, on this date, a request for toll information was made for telephone numbers 407-837-5111 and 407-837-5106 (Fax) in order to determine if a copy of said Order had been possibly faxed to anyone outside of that office. Also Ms. [Thomas] was contacted and a request made for a fax computer printout detailing material sent out of the HRS office on the day in question (May 29) subsequent to the receipt of the Puffinberger document.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
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Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: June 22, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 11:15 A.M. this date, the undersigned received a telephone call from Attorney Ann Noble with the law firm of Baker-Hostetler, Washington, D.C., telephone number 202-861-1681.

Ms. Noble called to advise this office that her firm represents all Scripps Howard Newspapers in the country and wished for a clarification as to the reasons why Mr. Tim Roche was requested to give a statement. After being advised of the circumstances surrounding the Puffinberger case and the fact that Chief Assistant State Attorney Phoebus would be out of town for approximately two weeks, she stated that she would call back to confer with both CASA Phoebus and the undersigned on July 3, 1990.

INVVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: July 09, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At approximately 4:00 P.M. this date, the undersigned contacted Ms. Jane Vernon (283-3136) in a further attempt to identify the person responsible for Faxing the Court Order to the West Palm Beach Office.

Ms. Vernon checked the Puffinberger file in order to ascertain if a cover sheet showing the person sending the Fax was present with negative results.

Ms. Vernon also stated that she had a printout showing all messages sent from the Stuart HRS Office via the Fax machine. This material was Fax'd to this office and reviewed. It reflected the fact that the first message on May 29, 1990 was sent at 22:51 hours (10:51 P.M). When questioned about earlier transmissions, Ms. Vernon stated that there was no record available since these transmit records were routinely destroyed.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: July 09, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At approximately 3:00 P.M. this date, the undersigned spoke with Ms. Patricia Santiago regarding the identity of the individual at the Martin County HRS Office who had Fax'd the subject Order to the West Palm Beach Office at Ms. Santiago's direction.

It should be noted that interview of Ms. Jane Vernon, Ms. Santiago's secretary, and the records of HRS at West Palm Beach indicated that Ms. Vernon could not be the person who fad Fax'd the items to HRS - West Palm Beach, since she had taken the day (May 29, 1990) off. It was Ms. Santiago's best recollection during her interview that she had given it to Ms. Vernon to Fax.

Ms. Santiago now stated that it was possible that she, herself, might have Fax'd the material to West Palm Beach

but she could not be positive. She could not recall giving the Order to anyone else at the Stuart HRS office.

INVESTIGATION CONTINUING

OFFICE OF THE

State Attorney

NINETEENTH JUDICIAL CIRCUIT OF FLORIDA
SERVING
INDIAN RIVER, MARTIN, OKEECHOBEE
AND ST. LUCIE COUNTIES

411 South Second Street
Fort Pierce, Florida 34950
(407) 465-3000

BRUCE H. COLTON
State Attorney

July 10, 1990

Mr. Robert Williams
District Administrator - HRS
111 George Avenue
West Palm Beach, FL 33402

Dear Mr. Williams:

In previous correspondence I had advised you of this office's investigation into the circumstances surrounding the improper release of a sealed court order involving a juvenile, CHARLOTTE M. PUFFINBERGER. At that time I had requested voluntary polygraph examinations of a number of your employees, these being Janice Gammill, Katherine Thompson, Laurel Hopper, Patricia Santiago and Cam Freedlund. In your letter of response, dated June 28, 1990 you indicated that these employees have declined to be tested.

I have just completed interviewing the remaining HRS personnel, all of whom are assigned to the Stuart Office. I am, therefore, again requesting that these other HRS employees voluntarily submit to a polygraph. The individuals concerned would be Jane Vernon, Secretary; Lila Daniels, Caseworker; Robin Kloster, Foster Care Worker; Betty Segebarth, Adoptions and Greg Daniel, Investigator. Please be aware that I have advised all of the above employees to discuss the situation with you or your designee, prior to making any decision relative to the polygraph examination.

I would greatly appreciate your assistance in determining whether these employees wish to be so tested and to advise me of their decisions so that this investigation can be concluded in a timely fashion.

If you have any questions relative to this matter, I can be contacted during normal business hours. Thanking you in advance, I remain,

Sincerely,

/s/ David P. Powers
David P. Powers
Chief Investigator

DPP:sme

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: July 12, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 9:15 A.M. this date, the undersigned spoke with Martin County Chief Clerk Marsha Stiller regarding this office's request to polygraph certain members of her staff who had come into contact with the Puffinberger court order.

Of all the individuals requested to voluntarily submit to a polygraph, only one, Tammy Franklin, declined the offer. All of the other employees of the Clerk's Office, previously interviewed, indicated they would be willing to be tested. These employees are: Carol Tilton, Brenda Chapman and Julie Ann Rodenberry-Sherman.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: July 12, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 3:00 P.M. this date, the undersigned contacted Attorney Ron Smith at his office reference the subject case. At that time he was requested to voluntarily submit to a polygraph examination regarding the Puffinberger issue. Mr. Smith stated that he was agreeable to taking the test.

In addition, Mr. Smith's secretary, Lynn Rusik, was also requested to take the examination to which she agreed.

At 5:00 P.M. this date, spoke with Attorney Karen Steger regarding this office's request for her to voluntarily take a polygraph. Ms. Steger stated she was agreeable to taking the test.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: July 12, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: On this date, spoke with Chief Clerk Marsha Stiller re the subject investigation with the folowing results:

Mrs. Stiller was advised that this office, as part of the ongoing investigation, was requesting polygraph examinations of the following Clerk's Office personnel: Carol Tilton, Tammy Franklin, Brenda Chapman and Julie Ann Roddenberry-Sherman. It was also impressed upon Mrs. Stiller that these polygraph examinations would be voluntary in nature.

Mrs. Stiller stated that she would contact the above employees, determine what their postion was relative to voluntarily taking said test, and contact this investigator as expeditiously as possible.

In addition a taped statement was taken at 9:30 A.M. this date of Attorney Joe Negron, an associate with the law firm of Steger and Steger. The basis for this statement was to corroborate a conversation he had had with reporter Tim Roche at the Steger law offices on the day in question (May 29, 1990).

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: July 18, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: As of this date, all of the individuals who had come into direct contact with the subject Court Order have been identified and interviewed. These include attorneys, secretarial personnel, court clerks and HRS employees.

The Order in question along with two (2) copies was initially delivered to Carol Tilton, Supervising Clerk, Juvenile Division, Martin County Courthouse, by Judge Kanarek at approximately 9:30 A.M., May 29, 1990. Ms. Tilton Xeroxed an additional copy and placed the three (3) copies in envelopes to be picked up by: A) Patricia Santiago, HRS, B) Karen Steger, Attorney and C) Ron Smith, Attorney. Ms. Tilton then contacted each of the above persons and requested that they come to the Clerk's Office to personally pick up the Order. Ms. Tilton then stated that she locked the original Order in her cabinet at her office.

With regard to the copy given to HRS Attorney Santiago, she appeared at the courthouse accompanied by Ms. Betty Segebarth of the Adoptions Unit of HRS. The document was read by both at the Clerk's Office and then brought to the HRS office on 7th Street in Stuart. At that time it was shown to a number of HRS employees who read it. It should be noted that some state they read it in its entirety, others perfunctorily. None of these employees, according to Ms. Santiago, had the opportunity to Xerox a copy of the Order—most, however, would have had a basic working knowledge of the contents of the Court Order. All of the Stuart HRS employees have denied any contact with Mr. Tim Roche of the Stuart News with regard to the subject Order. Attorney Santiago then had the Order Faxed to the West Palm Beach office of the HRS at the direction of her superior, District Legal Counsel Laurel Hopper at that office. The Fax was received by Ms. Hopper's secretary, Catherine Thomas, who had been alerted that the Fax was on its' way. She (Thomas) remained at the Fax machine, along with Public Information Coordinator-HRS, Cam Freedlund, until the entire Order was received. A copy was then made by Ms. Thomas for her supervisor, Ms. Hopper, placed in the Puffinberger file and left on Ms. Hopper's desk. It does appear, however, through interviews of the West Palm HRS personnel that two (2) additional copies were, in fact, made and distributed to Ms. Freedlund and Ms. Janice Gammill, Senior Attorney, HRS, West Palm Beach office. Secretary Catherine Thomas did not, during her interview, recall Xeroxing these additional copies. With regard to any contact with Mr. Roche on the day in question, all of the HRS personnel, both from the Stuart and West Palm Beach offices, have denied having any contact, either personally or telephonically.

The envelope for Attorney Ron Smith was picked up by his secretary, Lynn Rusin, after being advised by Clerk Carol Tilton that it was ready. Ms. Rusin responded to

the courthouse, opened the envelope, briefly read the title and then returned to her office where she placed the Order, still in the envelope, on Attorney Smith's desk. A copy of the Order was subsequently Xeroxed for Mrs. Puffinberger but was not released to her on the day in question. Attorney Smith and Ms. Rusin both state that they have had no contact with Tim Roche as to the Court Order.

The third envelope for Attorney Karen Steger was personally given to her by Clerk Carol Tilton after a call had been placed to Ms. Steger advising her that the Order was ready to be picked up at the Clerk's Office. According to Ms. Steger, she returned to her office and involved herself in appointments with various clients. She recalled Tim Roche appearing at her office at approximately 6:30 P.M. on the evening in question and during a brief conversation with her, had asked for a copy of the Court Order. Ms. Steger stated that she had declined, citing the appropriate statute prohibiting dissemination of this type of material. Roche then stated to her that he would be able to get it from someone else and would call her later that evening when he got it. Ms. Steger received a telephone call from Roche at her home at approximately 8:30 P.M. and at that time he told her that he had obtained a copy from "someone in HRS" who had a different opinion of what the law was.

It is of interest to note that Attorney Joe Negron, an associate of Karen Steger's firm had observed Roche waiting for Ms. Steger in the firm's waiting room. Mr. Negron recalled that he had a brief conversation with Roche prior to the Roche/Steger conversation mentioned previously. During this conversation, Roche told him that the judge had ruled to terminate the parental rights of the mother in the Puffinberger case. Mr. Negron also advised that statements made by Roche during this conversation indicated to him that he (Roche) was obviously familiar with the details and basis of the ruling in question at that time.

Prior to appearing at Ms. Steger's office, Mr. Roche telephoned Attorney Smith's office at 5:13 P.M. and spoke with the receptionist, Karen Martin. When interviewed, Ms. Martin stated that Roche had called, asking for Mr. Smith. Attorney Smith advised Ms. Martin that he did not wish to speak with Roche but to take a message. Roche then told the receptionist if Mr. Smith wanted to know the ruling of the court in the Puffinberger case, he had it. Ms. Martin did not believe that Roche physically had the Order at the time of the call but rather, simply was aware of the decision of Judge Kanarek.

It appears that Tim Roche had at least knowledge of the contents of the Court Order when he called Attorney Smith at 5:13 P.M., May 29, 1990. It would then follow that, if the sworn statements obtained are to be believed, Roche obtained a hard copy of the Puffinberger Court Order sometime between 5:13 P.M. when he called Attorney Smith's office or approximately 6:45 P.M. when he left Attorney Steger's office and 8:30 P.M. when he telephoned Ms. Steger at home. For informational purposes, the Martin County Clerk's Offices close at 5:00 P.M.; HRS offices in Stuart and West Palm Beach at 5:30 P.M.

A related issue regarding this case arose during the interview of Ms. Carol Tilton, Supervisor of the Juvenile Division, Martin County Clerk's Office on June 15, 1990. Under oath, Ms. Tilton stated that only three (3) copies plus the original existed and that she had not made additional copies for anyone. After an interview of a coworker, Tammy Franklin, it was shown that Ms. Tilton had not been truthful during her sworn statement and had, in fact, shown the Court Order to a number of courthouse employees as well as Xeroxing a copy for Ms. Franklin. According to Ms. Franklin, the copy given remained in her possession throughout the day, was brought home the evening of May 29th, left in her auto at her residence in Indidantown and returned to Ms. Tilton on the following

morning. Ms. Franklin stated that she had glanced at the Order on May 29th and only read it completely the following day when she returned to the office. She also denies any contact with reporter Roche.

During the subject investigation, the following individuals were contacted and interviewed:

HRS PERSONNEL (STUART OFFICE)

Patricia Santiago (Attorney)
Betty Segebarth (Adoptions)
Jane Vernon (Secretary)
Robin Kloser (Foster Care)
Lila Daniels (Caseworker)
Greg Daniel (Investigator)

HRS PERSONNEL (WEST PALM BEACH)

Laurel Hopper (District Legal Counsel)
Janice Gammill (Senior Attorney)
Cam Freedlund (Public Information Coordinator)
Catherine Thomas (Secretary)

CLERK'S OFFICE (MARTIN COUNTY)

Carol Tilton (Supervisor/Clerk-Juvenile Division)
Tammy Franklin (Clerk-Appeals Division)
Julie Ann Rodenberry-Sherman (Supervisor Circuit Court)
Brenda Chapman (Deputy Clerk-Felony Division)

GUARDIAN AD LITEM PROGRAM

Debbie Fromang

ATTORNEYS (PRIVATE PRACTICE)

Ron Smith (Attorney for mother)
Karen Steger (Guardian Ad Litem)
Joe Negron (Associate, Steger & Steger)

OTHER

Lynn Rusin (Secretary for Attorney Smith)
Kathy Diggins (Foster care mother)
Barbara Hopkins, Legal Assistant, Steger & Steger
Leslie Cuartas, Paralegal, Steger & Steger

During this investigation, an attempt was made to obtain copies of the Fax machine log from HRS, both Stuart and West Palm Beach offices, with negative results. HRS's present policy does not include the maintaining of any type of transmission log. This was done to possibly show that the Court Order had been Faxed to Tim Roche at the Stuart News on May 29th. A request had been made to Southern Bell for toll information on both the business telephone number and the telephone (Fax) number at the West Palm Beach HRS office in a further attempt to ascertain if the copy came from that office. Results obtained under subpoena failed to show any such transmission or call. In the event the Stuart HRS Fax machine had been used for that purpose there would be no telephone toll record since it would have been a local transmission (call).

All persons directly related to the Puffinberger Court Order have also been offered a voluntary polygraph examination. All HRS personnel have declined to be examined as well as Ms. Tammy Franklin of the Clerk's Office. The remainder of the Clerk's Office employees have responded affirmatively as well as Attorneys Ron Smith and Karen Steger and Mr. Smith's secretary, Lynn Rusin. Tim Roche was contacted and asked to give a statement to this office as to how he had obtained the subject Court Order which he declined to do, upon advice of attorney.

It is this investigator's determination that all investigative avenues, other than possible polygraph examinations have been exhausted. The investigative results will be referred to CASA Dave Phoebus for his review and determination.

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: July 19, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 1:05 P.M. this date, the undersigned spoke via telephone to Ms. Karen Martin, receptionist for Attorney Ron Smith. This contact was made to determine the time and content of the telephone call from reporter Tim Roche on May 29th.

Ms. Martin stated that she received the call from Roche at exactly 5:13 P.M. and had referred to her message pad for the time and date. With regard to the statements made by Roche, she advised that he had asked for Ron Smith and then told her that if Ron wanted to know the ruling, he had it. She also stated that she did not believe he physically had the Order at that time, but rather knew the decision of Judge Kanarek.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: July 20, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 9:00 A.M. this date, the undersigned spoke with Mr. Chuck Piver, Inspections Division of HRS, regarding the subject case.

After briefing Mr. Piver on the status of the case, he was requested to obtain, if available, Suncom telephone bills for the HRS office in West Palm Beach (both regular telephone service and Fax machine) for May 29, 1990. He indicated he would obtain this info as expeditiously as possible and contact this office with the results.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: July 24, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 3:45 P.M. this date, the undersigned contacted Mr. Robert Williams, District Manager of HRS, West Palm Beach, 837-5078. This was done in a further attempt to ascertain if the personnel of the HRS Stuart office would be willing to voluntarily submit to polygraph examinations regarding the subject case. It should be noted that a letter had been sent on July 10, 1990 requesting a determination from Mr. Williams. No reply was forthcoming.

Mr. Williams at this time indicated that it was the HRS policy not to have employees of his agency submit to polygraph examinations. He stated he would confirm this conversation with a letter indicating the above.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin	DATE: July 26, 1990
CASE TITLE: MARTIN COUNTY CIRCUIT COURT	CASE #: M90/06010ISC
CASE TYPE: Allegation of Criminal Contempt	REPORT BY: _____ CSAI David P. Powers/sme
COPIES TO:	APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At approximately 2:30 P.M., July 25, 1990, the undersigned telephonically communicated with Ms. Jill Taylor, reporter with the Palm Beach Post, Stuart office, regarding her knowledge of the Puffinberger issue. It appears through interviews conducted that Ms. Taylor might have obtained the contents (but not the hard copy) of the Puffinberger Court Order on May 29th.

When questioned, Ms. Taylor declined to discuss the issue of whether she had, in fact, obtained any information from any source on the date in question.

INVESTIGATION CONTINUING

OFFICE OF THE
STATE ATTORNEY

Nineteenth Judicial Circuit of Florida
Serving
Indian River, Martin, Okeechobee
and St. Lucie Counties

BRUCE H. COLTON
State Attorney

INVESTIGATIVE REPORT

CO. OF ORIGIN: Martin — DATE: August 1, 1990

CASE TITLE: MARTIN COUNTY CIRCUIT COURT — CASE #: M90/06010ISC

CASE TYPE: Allegation of Criminal Contempt — REPORT BY: _____ CSAI David P. Powers/sme

COPIES TO: — APPROVED: /s/ DPPowers Chief Investigator

SYNOPSIS: At 10:00 A.M. this date, this investigator received a telephone call from Ms. Catherine Thomas, secretary as HRS. She indicated that all involved personnel at the Stuart office had been personally contacted and all declined to be polygraphed.

Mr. Williams, the District Supervisor - HRS, had previously spoken with this investigator and had advised the same. He stated, at that time, that he would follow up with a letter as to the declination but as of this date, no letter has been received.

INVESTIGATION CONTINUING

OFFICE OF THE
State Attorney

NINETEENTH JUDICIAL CIRCUIT OF FLORIDA
SERVING
INDIAN RIVER, MARTIN, OKEECHOBEE
AND ST. LUCIE COUNTIES

Bruce H. Colton
State Attorney

411 South Second Street
Fort Pierce, Florida 34950
(407) 465-3000

June 22, 1990

Mr. Robert Williams
District Administrator - HRS
111 George Avenue
West Palm Beach, FL 33402

Dear Mr. Williams:

As per our telephone conversation this date, this is to confirm this agency's intention to request polygraph examinations of a number of employees of your agency. As I had indicated, this is in response to a directive by Circuit Court Judge Paul Kanarek that this office investigate the circumstances surrounding the improper release on May 29, 1990 of a sealed Court Order involving a juvenile, CHARLOTTE M. PUFFINBERGER, to a newspaper reporter. The information contained in this Court Order was then quoted in a local newspaper.

The individuals concerned would be the following employees: JANICE GAMMILL, KATHERINE THOMPSON, LAUREL HOPPER, PATRICIA SANTIAGO and CAM FREEDLUND. Please be aware that these polygraph examinations would be entirely voluntary and we would make every effort to accommodate the work demands of your employees so as not to interfere with their normal work day.

I will be out of town next week but would anticipate contacting you Friday, May 29th, in order to set up these tests.

Sincerely,

/s/ David P. Powers
David P. Powers
Chief Investigator

DPP: sme

HRS STATE OF FLORIDA

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

June 28, 1990

David P. Powers
Chief Investigator
Office of the State Attorney
Nineteenth Judicial Circuit
411 S. Second Street
Fort Pierce, FL 34950

Dear Mr. Powers:

I am writing in response to your letter of June 22, 1990.

The referenced employees do not wish to volunteer for polygraph examinations.

It should be noted that Laurel E. Hopper, District Legal Counsel; Katherine Thomas, Paralegal Specialist; and Cam Freedlund, Public Information Officer, have not yet been questioned by you concerning knowledge they may have pertinent to your investigation.

Perhaps you would like to contact them regarding the information you are seeking.

Yours truly,

/s/ Robert L. Williams
ROBERT L. WILLIAMS
District IX Administrator

REW/LEH/kt
cc.: Laurel E. Hopper
Katherine Thomas
Cam Freedlund

HRS STATE OF FLORIDA

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

August 6, 1990

David P. Powers
Chief Investigator
Office of the State Attorney
Nineteenth Judicial Circuit
411 S. Second Street
Fort Pierce, FL 34950

Re: Puffinberger

Dear Mr. Powers:

I am writing to confirm our telephone conversation last week and in response to your letter of July 10, 1990.

The referenced employees in the Stuart office do not wish to volunteer for polygraph examinations in connection with the above matter.

Ms. Hopper was also gratified to hear that as a result of your investigation you had "excellent" reason to believe that the information was not transmitted from the West Palm Beach office.

If you are in need of further assistance, please do not hesitate to call the office.

Yours truly,

/s/ Katherine Thomas
Katherine Thomas
Paralegal Specialist

CASE JOURNAL

DEFENDANT_____ CASE NUMBER:_____

DATE	TIME	ACTIVITY
8/28/90	12:00 Noon	Spoke w/ Judge Kan. He requested that Tim Roche be subp to give a statement and upon Tim Roche's refusal—apply for an Order to Show Cause.
8/28/90	1:15 pm	Spoke w/ Chief Inv. Powers—He will serve subp on Roche on 8/29/90.
8/30/90		Subp on Roach served by Chef Inv Powers.
8/30/90	3:10 pm	Ann Noble—Atty for Stuart News called in a huffy manner advising she would move to quash subp.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA

IN RE: INVESTIGATION: FLORIDA STATUTE 27.04, SUBPOENA OF TIM ROCHE

STATE OF FLORIDA)
)ss.
COUNTY OF MARTIN)

AFFIDAVIT

BEFORE ME this day personally appeared David P. Powers who, being first duly sworn, deposes and states as follows:

1. My name is David P. Powers and I am employed as the Chief Investigator for the State Attorney's Office for the 19th Judicial Circuit.

2. In my course of duties as an investigator, I have been assigned to investigate the release of a confidential order issued by Judge Paul B. Kanarek on May 29th, 1990.

The confidential order was limited in its release to specific parties involved in a hearing in the termination of parental rights of one Cheryl Puffinberger, and specifically not made a part of public records or released to the press.

3. On May 30th, 1990, The Stuart News published an article written by reporter Tim Roche, quoting the confidential order of Judge Kanarek.

4. My investigation has been directed toward finding the source of the "leaking" of the confidential order to Tim Roche of The Stuart News.

5. On August 30th, 1990, I personally served Tim Roche with an investigative subpoena issued by the Clerk of Court pursuant to Florida Statute 27.04.

The subpoena commanded Mr. Roche to appear before the State Attorney on September 7th, 1990 at 10:00 A.M.

6. On September 7th, 1990, Tim Roche did appear before Assistant State Attorney Richard A. Barlow.

Mr. Roche refused to answer any and all questions relating to the source of Mr. Roche's receipt on the confidential order.

7. All other sources and investigation leads have been exhausted in an attempt to determine who provided Mr. Roche with the confidential order of Judge Kanarek.

8. In order to complete the investigation it is necessary for Mr. Roche to answer questions concerning the source of his receipt of the confidential order.

This affidavit is made in good faith.

Further, affiant sayeth naught.

/s/ David P. Powers
DAVID P. POWERS

Sworn to and subscribed before me
this 7th day of September, 1990.

/s/ Mucci
NOTARY PUBLIC
STATE OF FLORIDA

Notary Public, State of Florida
My Commission Expires Dec. 11, 1993
Bonded Thru Troy Fain-Insurance Inc.

June 12, 1990— Case opened.

June 14, 1990— Conference with CASA Dave Phoebus.

June 15, 1990— Interview of Tilton, Tammy Franklin, Julie Ann Roddenberry-Sherman, Brenda Chapman, Janice Gammil and Lynn Rusin.

June 18, 1990— Interview of Karen Steger.

June 18, 1990— Interview of Ron Smith.

June 18, 1990— Attempted to interview Tim Roche (reference to Nancy Smith—Managing Editor—Stuart News).

June 19, 1990— Spoke with Katherine Thomas/HRS-West Palm Beach in reference to fax—no logs.

June 19, 1990— Interview of Debbie Fromang.

June 22, 1990— Received call from Attorney Ann Noble/ Rep. Scripps Howard.

June 22, 1990— Interview of Patricia Santiago.

June 22, 1990— Letter to Robert Williams/HRS.

June 28, 1990— Reply from Robert Williams/negative.

July 2, 1990— Interview of Greg Daniel, Lila Daniels, Robin Kloser, Betty Segebearth, Jane Vernon/HRS Stuart.

July 5, 1990— Interview of Cam Freedlund, Laurel Hopper, Catherine Thomas—HRS/West Palm Beach.

July 9, 1990— Interview of Patricia Santiago.

July 9, 1990— Jane Vernon checked fax—no record— Stuart Office/HRS.

July 10, 1990— Letter to Robert Williams, in reference to Stuart Office HRS/polygraphs.

July 12, 1990— Called Marsha Stiller—Set up polygraph for Tilton, Sherman, Franklin and Chapman.

July 12, 1990— Statement of Attorney Negron. (Conversation with Roche).

July 12, 1990— Called Stiller—Tammy Franklin (only) declined polygraph. Tilton, Chapman and Sherman/OK.

July 12, 1990— Attorney Smith—yes to polygraph.
Attorney Steger—yes to polygraph.
Lynn Rusik—yes to polygraph.

July 19, 1990— Interview of Kathy Diggins.

July 19, 1990— Spoke (telephone) to Ron Smith's receptionist in reference to Roche calling at 5:13 p.m.—"If he wanted to know the ruling, he had it—NOT A COPY."

July 20, 1990— Called Chuck Piver—Inspector Div.—HRS in reference to fax/suncom in WPB—negative.

July 23, 1990— Interview of Leslie Cuartass (Steger). Interview of Barb Hopkins

July 24, 1990— Called Williams/polygraph on Stuart HRS—negative.

July 25, 1990— Called Jill Taylor/Palm Beach Post.

August 30, 1990—Served Tim Roche with subpoena.

September 7, 1990—Appeared at SAO.

*Telephone tolls for HRS (both offices) were obtained under subpoena—negative.

TOTAL NUMBER OF INTERVIEWS = 22

HRS (WPB)	= 4
HRS (STUART)	= 6
CLERK (MC)	= 4

GUARD AD LITEM = 1
ATTORNEYS (PRIV) = 3
OTHER = 4